IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, A. D. 1898.

No. 599.

AMERICAN OAK LEATHER COMPANY, PFISTER & VOGEL LEATHER COMPANY, THOMAS E. WILDER AND JOHN WILDER, COPARTNERS AS WILDER & COMPANY, EAGLE TANNING WORKS, UNITED STATES LEATHER COMPANY, LAMBEAU LEATHER COMPANY, THE BARBER BROS. COMPANY, BOSTON BLACKING CO., BULLETIN & GOOD ROADS, CARSON-PIRIE MONTHLY CO., CARVER COTTON GIN CO., CALVERT LITHOGRAPHING & ENGRAVING CO., B. E. COLE & CO. COLBURN, FULLER & CO., CONSUMERS' BOX MANUFACTURING CO., THE CONTINENT SHOE COMPANY, CROOKS, ROOT & CO., CYCLING GAZETTE, EASTON BOOT & SHOE COMPANY, ESTABROOK-ANDERSON SHOE CO., FARNSWORTH, HOYT & CO., I. P. FARNUM, C. C. FARWELL & CO., P. A. FIELD & CO., FLETCHER MF'G CO., A. F. GALLUM & SONS, H. M. GEORGE & CO., GOLDSMITH, ROSENBUSH & LEVIE, GOODYEAR RUBBER CO., THE R. J. GUNNING CO., M. L. HILLER & SONS, A. J. MARCUS & CO., J. & H. MAYER, H. MICHAELS & CO., MILWAUKEE TACK CO., W. J. McBRIDE, PLIABLE SHOE CO., ROUSE, MANIERE, WILLIAMS & CO., SHATTUCK & BINGER, A. W. SHAW & CO., T. J. SHAY & CO., THE SINGER MANUFACTURING COMPANY, W. W. SPAULDING, SPINNEY VIRTUE & CO., STOWE, BILLS & HAWLEY, THILMANY PULP & PAPER MILLS, TUBULAR RIVET & STUD COMPANY, UNIVERSITY OF CHICAGO WEEKLY, GEORGE H. VAN PELT, WACHUSETT MILLS, WEIR BROS. PAPER CO., CONSOLIDATED HAND METHOD LASTING MACHINE CO., HILLIARD & MERRILL, TRIPP GIANT LEVELLER CO., DRY GOODS REPORTER CO. AND E. H. VAN INGEN & CO.,

Appellants,

vs.

UNITED STATES RUBBER COMPANY, L. CANDEE & CO., THE METROPOLITAN NATIONAL BANK OF CHICAGO, AND C. H. FARGO & CO.,

Appellees.

MR. JACOB NEWMAN,
MR. FREDERICK A. SMITH,
MR. FRANK A. HELMER,
MR. WILLIAM J. MANNING,
MR. SAMUEL P. McCONNELL,
MR. HORACE KENT TENNEY,
MR. GEORGE W. NORTHRUP, JR.,
Counsel for Appellants.

MR. EDWARD S. ISHAM,
MR. WILLIAM G. BEALE,
MR. HENRY S. ROBBINS,
MR. GILBERT E. PORTER,
MR. GEORGE A. FOLLANSBEE,
MR. MITCHELL B. FOLLANSBEE,
Counsel for Appellees.

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653

INDEX.

.....	1
t of Elbridge G. Keith	2
for Appeal	7
ient of errors	11
ent of errors of American Oak Leather Co. et al.	26
f May 12, 1899, allowing appeal	38
Bond	39
on to waive transcript of record, etc.	41
Certificate	45
	46

in the Circuit Court of the United States for the Northern Pleas.
of Illinois—Northern Division, in Chancery sitting at the
States court room in the City of Chicago, in said District
ision, before the Hon. Peter S Grosscup, Circuit Judge of
ted States for the Seventh Judicial Circuit, on Thursday,
rth day of May, in the year of our Lord one thousand eight
l and ninety nine, being one of the regular days of the De-
term of said Court, 1898, and of our independence the one
l and twenty third year.

S. W. BURNHAM,
Clerk.

The American Oak Leather Company, a Corporation, etc.
vs.
C. H. Fargo & Company, a Corporation, et al.
} In Chancery. 24238

Be it remembered that on this day, to-wit—the Seventh day of October, 1896, there was filed in the clerk's office of said Court certain affidavit made by Elbridge G. Keith, which said Affidavit is in the words and figures following, to wit:

Affidavit of E. G. Keith, filed Oct. 7, 1896.

2 AFFIDAVIT OF ELBRIDGE G. KEITH.

United States of America,
Northern District of Illinois,
Northern Division.
} ss.

IN THE CIRCUIT COURT OF THE UNITED STATES

For the Northern District of Illinois.

Northern Division.

The American Oak Leather Company, a corporation, etc.
vs.
C. H. Fargo & Company, a corporation, et al.
} In Chancery. G. N. 24238—T. N. 85

Elbridge G. Keith, being first duly sworn, upon oath depose and says that he is the president of the Metropolitan National Bank of Chicago, a corporation, one of the defendants in the above entitled cause and has been such president for several years last past.

Affiant further states that the corporation known as C. H. Fargo & Company, wholesale dealers in boots and shoes, has for several years last past been doing business with the said Metropolitan National Bank, has kept a deposit account therein and has from time to time borrowed money therefrom to use in carrying on its business aforesaid.

3 Affiant further says that for the purpose of establishing its credit with the said bank, the said C. H. Fargo & Co. did from time to time furnish to said bank statements of its assets and liabilities

Affidavit of E. G. Keith, filed Oct. 7, 1896.

hich showed it to have assets largely in excess of its liabilities; d by reason thereof, and on account of the manner in which it d transacted its business with affiant's bank, it established a large e of credit therewith.

Affiant further states that the line of credit so extended to the d C. H. Fargo & Company was the sum of fifty thousand dollars 50,000), and at times said bank had loaned the said corporation temporary use even more than that sum, which loans had, for e most part, been promptly met or renewed at the maturity reof.

Affiant states that, relying upon said representations aforesaid, e said bank had loaned to said C. H. Fargo & Company oneys from to time, so that on or about the first y of August, 1896, it had outstanding notes presenting an indebtedness of said company to the amount of nty thousand dollars ($40,000), and that in view of the stringency the money market, at or about that time said bank gave notice to d C. H. Fargo & Company that it desired to call in the said ney so loaned to the amount aforesaid from the said C. H. Fargo Company, not later than the first day of November, 1896.

Affiant further states that in response to said notice, Charles E. rgo, the president of said company, shortly thereafter called at iant's bank and stated to affiant, that owing to the light sales d company were making, the difficulty of making collections and e general disturbance of business that existed on account of the nding presidential election, not only would said company not be le to pay in said moneys so demanded, as soon as named, but that would be obliged to borrow from the said bank up to the full line of its credit of $50,000 aforesaid, being the sum of ten thousand dollars in addition to the amount which the bank then held against the said C. H. Fargo & Company.

Affiant further states that the said president of the said C. H. rgo & Company then and there represented to him that the said mpany was amply solvent; that its assets very largely exceeded liabilities, and that there was no question but what the former uld in any event be sufficient to pay off all its outstanding in btedness.

Affiant further states that the said C. H. Fargo & Company had eretofore given the said bank its judgment promissory notes for the debtedness from time to time owing by it to said bank, and after e consideration this affiant finally proposed and agreed with the esident of said corporation that in case the said C. H. Fargo & mpany would give its judgment notes, not only for the $10,000 requested to be loaned, but for the entire indebtedness that would

Affidavit of E. G. Keith, filed Oct. 7, 1896.

then be owing by said C. H. Fargo & Company to said bank, th said bank would loan said company said additional sum of $10,00

Affiant further states that the said president of said compan then and there expressed his willingness so to do, and then and the informed affiant that said company had theretofore given its judgme notes to the United States Rubber Company and L. Candee & Com pany for the amounts that it was indebted to them, respectivel and that he would get the necessary authority from his compan authorizing it to make judgment notes to said bank for the amou of its indebtedness to said bank as aforesaid.

Affiant further states that thereafter the said C. H. Fargo, Pre ident as aforesaid, reported that he had got the authority from h company, authorizing him to execute said judgment notes aforesai

Whereupon the said bank loaned the said C. H. Fargo & Com

5 pany said additional sum of $10,000 and received its two judg ment promissory notes therefrom for the sum of twenty-fi thousand ($25,000) each, and upon receipt of the same it paid ov to said C. E. Fargo as president of the said C. H. Fargo & Com pany said sum of $10,000 and surrendered to him said plain note evidencing said indebtedness of $40,000 aforesaid.

Affiant further states that in the meantime he learned the exte of the indebtedness of the said C. H. Fargo & Company to sa United States Rubber Company. and the said L. Candee & Com pany, and also learned that they had some kind of an agreeme with the said C. H. Fargo & Company, by which they were auth ized to secure their indebtedness in advance of that of any of th other creditors of the said Company.

Affiant further states, that thereupon he caused steps to be take to ascertain just what advantages the said C. H. Fargo & Compan had given to said two companies aforesaid and having learned tha they were entitled under their agreement with said company, t enter up their judgments in advance of anyone else, as aforesai and having learned, also, the extent of the indebtedness of the sa C. H. Fargo & Company to them, he caused further steps to b taken looking towards the payment or security of the said tw judgment notes aforesaid, and that upon receiving a propositio from the said C. H. Fargo & Company to purchase from it it manufacturing plant at Dixon, Illinois, for the sum of twenty-fi thousand dollars ($25,000) he took said suggestion under consider ation with a view of determining the desirability thereof to sa bank.

Affiant further states, that during the entire negotiations betwee his said bank and the said C. H. Fargo & Company, he, and the

Affidavit of E. G. Keith, filed Oct. 7, 1886.

acting for him, were repeatedly assured by the officers of, and those acting on behalf of said C. H. Fargo & Company, that its assets were very largely in excess of its liabilities; that his present recollection is, that it was repeatedly stated that the assets of C. H. Fargo & Company were then not less than $550,000 while their liabilities did not exceed the sum of $400,000, and he, and those acting for him, were also assured that there was no question whatever as to the ability of said company to pay its debts in full, in any event whatever.

Affiant further avers, that he caused interviews to be held by persons representing his said bank with parties representing the said two companies aforesaid, and that at such interviews it was learned that said companies were contemplating the taking of active measures toward the collection of the indebtedness due to them from the said C. H. Fargo & Company, and that thereupon his affiant deemed that it would be for the best interest of both parties concerned not to act at cross purposes with each other, but to unite their efforts to collect their respective claims against said company.

Affiant further states, that it is not true that said bank and said companies consolidated their claims, but what they did do was to agree to unite their efforts to collect their respective claims, and in order to bring about such an agreement, it was deemed wise to stipulate between themselves, as they had a perfect right to do, that the result of their efforts should be distributed in the proportion of their respective claims, and that if either party received a larger percentage on his claim than the other party did as the result of their efforts, he would account to such other party for a sum sufficient to make the percentage of payments of their respective claims equal.

Affiant further states, that in view of what he learned as to the determination of the said United States Rubber Company and L. Candee & Company, as aforesaid, he determined to endeavor to secure the payment of the Bank's said two notes as aforesaid, and to that end he accepted the proposition of the said C. H. Fargo & Company for the transfer of its said plant at Dixon in payment of one of said notes of $25,000, as aforesaid, and he accordingly received deeds of said property and canceled and surrendered one of said notes and thereupon caused a judgment to be entered upon the other of said notes in the Circuit Court of Cook County, Illinois, and levies to be made upon the tangible property of said C. H. Fargo & Company at Chicago and at Dixon. He avers, however, upon information and belief, that such levies were made subsequent in point of time to levies made upon the same

Affidavit of E. G. Keith, filed Oct. 7, 1896.

property under executions issued out of the Circuit Court of the United States for the Northern District of Illinois, in favor of the said United States Rubber Company and the said L. Candee & Company.

Affiant further states upon information and belief, that the said property at Dixon, so conveyed to said bank as aforesaid, and the said tangible property so levied upon as aforesaid, did not constitute the entire assets of said C. H. Fargo & Company, nor did they together with the outstanding book accounts and bills receivable of said company, constitute its entire assets. Affiant is informed and believes that said C. H. Fargo & Company had considerable property other than that above referred to, and that among the property so held by it at the time of said conveyance and the obtaining of said judgments as aforesaid, was the three-story and basement brick building, Nos. 300 and 302 South Main Street, Pueblo, Colorado, and known as "Fargo Hotel" on lots fifteen (15) and sixteen (16) block sixty-eight (68) Pueblo; that he is informed and believes that the value of said property in good times was supposed to be about forty thousand dollars ($40,000) and that a conservative estimate on it now is twenty thousand dollars ($20,000) that the building on said lots fifteen and sixteen is a three-story

8 brick hotel about two blocks from the Union Depot in Pueblo, and that, so far as this affiant has been able to learn, said property was not encumbered at said dates aforesaid to exceed ten thousand dollars ($10,000) secured by a trust deed and the unpaid taxes thereon for 1894 and 1895, amounting to seven hundred sixty-four and 60/100 dollars ($764.60).

And further affiant saith not.

ELBRIDGE G. KEITH.

Subscribed and sworn to before me this 6th day of October, 1896.

(Seal) EDWARD DICKINSON,
Notary Public.

(Endorsed) Filed Oct. 7, 1896. S. W. BURNHAM,
Clerk.

9 And on, to-wit, the 12th day of May, 1899, there was filed in the office of the clerk of said court the petition for appeal of American Oak Leather Company, et al, in the following words and figures, to-wit:

Petition for Appeal, filed May 12, 1899.

United States of America,
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

In and for said District.

American Oak Leather Company
vs.
H. Fargo & Co., United States Rubber Company, L. Candee & Company, Metropolitan National Bank of Chicago, et al. } In Chancery. No.

Petition for an Appeal.

Your petitioners, the above named American Oak Leather Company, complainant herein, and Pfister & Vogel Leather Company; Thomas E. Wilder and John Wilder, copartners as Wilder & Company; Eagle Tanning Works; United States Leather Company; Sambeau Leather Company; The Barber Bros. Company; Boston Blacking Co., Bulletin & Good Roads; Carson, Pirie Monthly Co., Carver Cotton Gin Co., Calvert Lithographing & Engraving Co., B. F. Cole & Co., Colburn, Fuller & Co., Consumer's Box Manufacturing Co., The Continent Shoe Company; Crooks, Root & Co.; Cycling Gazette; Easton Boot & Shoe Company; Estabrook, Anderson Shoe Co., Farnsworth, Hoyt & Co., I. P. Farnum; C. C. Farwell & Co., P. A. Field & Co., Fletcher Mf'g. Co., A. F. Gallun & Sons; H. M. George & Co., Goldsmith, Rosenbush & Levie; Goodyear Rubber Co., The R. J. Gunning Co., M. L. Hiller & Sons; A. J. Marcus & Co., J. & H. Mayer; H. Michaels & Co., Milwaukee Tack Co., W. J. McBride; Pliable Shoe Co.; Rouse, Meniere, Williams & Co.; Shattuck & Binger; A. W. Shaw & Co.; E. J. Shay & Co.; The Singer Manufacturing Company; W. W. Spaulding; Spinney, Virtue & Co.; Stowe, Bills & Hawley; The Thilmany Pulp & Paper Mills; Tubular Rivet & Stud Company; University of Chicago Weekly; George H. Van Pelt; Wachusett Mills; Weir Bros. Paper Co.; Consolidated Hand Method Lasting Machine Co.; Hilliard & Merrill; Tripp Giant Leveller Co.; Dry Goods Reporter Co.; and E. H. Van Ingen & Co., intervening petitioners herein, show to this Honorable Court, that they and each of them, conceive themselves, and each of them,

Petition for appeal, filed May 12 1899.

aggrieved by the decree entered herein on the 4th day of May, A. D. 1899, in and by which it was among other things ordered, adjudged and decreed that all the exceptions filed by them, and each of them, to the Master's report herein, be overruled, and that said Master's report, and every part thereof, be approved ratified and confirmed, and that the judgments entered in this court on the 6th day of August, A. D. 1896, against C. H. Fargo & Co., and in favor of the defendant, the United States Rubber Company, for $145,400; the judgment entered in this court on the 6th day of August, 1896, against C. H. Fargo & Co., in favor of defendant L. Candee & Company for the sum of $38,300; the judgment entered in the Circuit Court of Cook County, Illinois, on the 6th day of August, 1896, against C. H. Fargo & Co., in favor of the defendant, the Metropolitan National Bank; the warranty deeds dated August 6th, 1896, executed by C. H. Fargo & Co., to defendant, Metropolitan National Bank, conveying real estate in the City of Dixon, Lee County, Illinois, as set forth in the bill of complaint; and the assignment executed August 6th, 1896, by C. H. Fargo & Co., to the defendant, United States Rubber Company, of all the book accounts, credits, choses in action and bills receivable of said C. H. Fargo & Co., were not believed by said parties to be fraudulent in law, but, on the contrary, believed to have been within their rights, and that the Metropolitan National Bank do re-

12 convey said real estate to the Receiver appointed in this cause and which finds that at the time of the appointment of the Receiver herein, there was due from C. H. Fargo & Co., to

The United States Rubber Company,	$142424
L. Candee & Company,	36530
Metropolitan National Bank of Chicago,	50000

and which orders, adjudges and decrees that the Receiver, after paying the Master's fee herein, fixed at the sum of $1500, and the proper disbursements in the course of administration including proper allowances for Receiver's and Solicitor's fees, to be hereafter determined, pay all the moneys now in his hands, or hereafter to be realized from said assets, to the creditors of C. H. Fargo & Co., mentioned in said decree, including said United States Rubber Company, L. Candee & Company and the Metropolitan National Bank of Chicago, pro rata, according to the amounts of their respective claims.

Your petitioners further show unto your Honors that heretofore on the 4th day of May, A. D. 1899, said defendants, the United States Rubber Company, L. Candee & Compaany and the Metropolitan National Bank of Chicago, filed herein their petition, praying an appeal from said order and decree to the United States C

it Court of Appeals for the Seventh Circuit, and also a certain signment of errors, and that thereupon, on the 4th day of May, D. 1899, an order was entered herein, allowing said defendants st named, to appeal to said United States Circuit Court of Apals for the 7th Circuit, and approving a certain appeal bond tenred by said defendants last named, and filed on said 4th day of May, A. D. 1899, in the clerk's office of this court.

Petition for appeal, filed May 12, 1899.

And your petitioners present and file herewith, and make a part hereof, their certain assignments of error, in which they ow and set forth the particulars in which they claim that they e aggrieved by said decree, and hereby respectfully appeal om said decree entered on said 4th day of May, A. D. 1899, for e reasons set forth in said assignments of error, to the United ates Circuit Court of Appeals, for the Seventh Circuit, and pray that is, their appeal, may be allowed, and that a transcript of the rec-d, and proceedings and papers upon which said decree was made, so much of said record, proceedings and papers as may be reired by law, or the practice of said United States Circuit Court Appeals for the Seventh Circuit, duly authenticated, may be nt to said United States Circuit Court of Appeals for the Seventh rcuit.

American Oak Leather Company,
By Smith, Helmer, Moulton & Price,
Its Solicitors.

Pfister & Vogel Leather Company,
By Tenney, McConnell, Coffeen & Harding,
Its Solicitors.

Thomas E. Wilder & John Wilder,
as Copartners as Wilder & Company,
By Wm. J. Manning,
their Solicitor.

Eagle Tanning Works,
By Wm. J. Manning,
Its Solicitor.

United States Leather Company,
By Ashcraft & Gordon,
Its Solicitors.

Lambeau Leather Company,
By Newman, Northrup & Levinson,
Its Solicitors.

The Barber Bros. Company.
Boston Blacking Co.
Bulletin & Good Roads.
Carson Pirie Monthly Co.

ition for
ppeal filed
lay 12, 1899.

Carver Cotton Gin Co.
Calvert Lithographing & Engraving Co.
B. E. Cole & Co.
Colburn, Fuller & Co.
Consumer's Box Manufacturing Co.
The Continent Shoe Company.
Crooks, Root & Co.
Cycling Gazette.
Easton Boot & Shoe Company.
Estabrook, Anderson Shoe Co.
Farnsworth, Hoyt & Co.
I. P. Farnum.
C. C. Farwell & Co.
P. A. Field & Co.
Fletcher Mfg. Co.
A. F. Gallum & Sons.
H. M. George & Co.
Goldsmith, Rosenbush & Levie.
Goodyear Rubber Co.
The R. J. Gunning Co.
M. L. Hiller & Sons.
A. J. Marcus & Co.
J. & H. Mayer.
H. Michaels & Co.
Milwaukee Tack Co.
W. J. McBride.
Pliable Shoe Co.
Rouse, Maniere. Williams & Co.
Shattuck & Binger.
A. W. Shaw & Co.
T. J. Shay & Co.
The Singer Manufacturing Company.
W. W. Spaulding.
Spinney, Virtue & Co.
Stowe, Bills & Hawley.
Thilmany Pulp & Paper Mills.
Tubular Rivet & Stud Company.
University of Chicago Weekly.
George H. Van Pelt.
Wachusett Mills.
Weir Bros. Paper Co.
Consolidated Hand Method Lasting Machine Co.
Hilliard & Merrill.
Tripp Giant Leveller Co.

Dry Goods Reporter Co., and
E. H. Van Ingen & Co.
By Newman, Northrup & Levinson,
their Solicitors.

Petition for appeal, filed May 12, 1899

Frederick A. Smith,
J. W. Northrup,
Jacob Newman,
Wm. J. Manning,
Samuel P. McConnell,
Horace Kent Tenney,
of Counsel.

(Endorsed) Filed May 12, 1899.
S. W. Burnham,
Clerk.

Assignment of errors, filed May 12, 1899.

And on the same day, to-wit, the 12th day of May 1899, there was filed in the office of the Clerk of said Court, the Assignment of Errors by United States Leather Company et al, intervening Petitioners in the following words and figures, to-wit:

United States of America,
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,
In and for said District.

American Oak Leather Company
vs.
E. H. Fargo & Co., United States Rubber Company; L. Candee & Company; Metropolitan National Bank of Chicago, et al.
} In Chancery. No.

Assignment of Errors, by United States Leather Company et al, Intervening Petitioners.

And now come United States Leather Company; Lambeau Leather Company; The Barber Bros. Company; Boston Blacking Co., Bulletin & Good Roads; Carson, Pirie Monthly Co., Car-

Assignment of errors, filed May 12, 1899.

ver Cotton Gin Co., Calvert Lithographing & Engraving Co., B. Cole & Co., Colburn, Fuller & Co., Consumer's Box Manufacting Co., The Continent Shoe Company; Crooks, Root & Co., Cycle Gazette, Easton Boot & Shoe Company; Estabrook, Anders Shoe Co., Farnsworth, Hoyt & Co., I. P. Farnum; C. C. Farn & Co., P. A. Field & Co., Fletcher Mfg. Co., A. F. Gallun Sons; H. M. George & Co., Goldsmith, Rosenbush & Le
16 Goodyear Rubber Co., the R. J. Gunning Co., M. L. Hiller Sons, A. J. Marcus & Co., J. & H. Mayer; H. Michael Co., Milwaukee Tack Co., W. J. McBride, Pliable Shoe C Rouse, Maniere, Williams & Co., Shattuck & Binger A. W. Sh & Co., T. J. Shay & Co., The Singer Manufacturing Compan W. W. Spaulding, Spinney, Virtue & Co., Stowe, Bills & Hawle Thilmany Pulp & Paper Mills, Tubular Rivet & Stud Compan University of Chicago Weekly, George H. Van Pelt, Wachus Mills, Weir Bros. Paper Co., Consolidated Hand Method Lasti Machine Co., Hilliard & Merrill, Tripp Giant Leveller Co., D Goods Reporter Co., and E. H. Van Ingen & Co., intervening petitioners herein, and assign the following errors to the order a decree of said Circuit Court entered herein on the fourth day May, 1899, to wit:

First. The Circuit Court erred in denying on May 4th, 189 the motion of the American Oak Leather Company to amend t original bill of complaint herein, by showing that the Dixon re estate conveyed by the Fargo Company to the Metropolit National Bank had, since the filing of the original bill, been tak from said bank by the action of other creditors of the Fargo Co pany, not parties to this record, by enforcing the liens which e isted against the property prior to its transfer to the bank; and striking out of the prayer for relief in the original bill the requ that the deed should be set aside and the bank requiried to co
17 vey the property to the receiver.

Second. The Circuit Court erred in overruling the exception and each of the exceptions filed by the intervening petitioners also named, and each of them, to the report of Henry W. Bishop, Ma ter in Chancery, filed in the said cause on April 17th, A. D. 1899.

Third. The Circuit Court erred in overruling the exception fil by said intervening petitioners to the report of Henry W. Bisho Master in Chancery, filed in said cause on April 17, A. D. 189 which reads as follows:

"For that the Master finds that the change of the Board "Directors and the officers and the changes of the by-laws of t "Fargo Company and the resolution authorizing the judgme

Assignment of errors, filed May 12, 1899.

notes and assignment of accounts, were all for the purpose of giving preferential security to the Rubber Companies, and that the only purpose of changing tho Board of Directors and amending the by-laws was to protect the Rubber Companies against the giving by the Fargo Company of preferential securities or judgment notes to other creditors which should be superior to the security of the Rubber Companies;

"Whereas, the Master should have found that the change in the personnel of the Board of Directors and in the by laws of the Company, was made for the purpose of withdrawing from the "officers of the company all power of giving to any other "creditor security for his debt, and for the purpose of preventing other creditors from collecting their claims until the claims of the Rubber Companies were paid in full, and for the purpose of placing the Fargo Company and all its assets, in the absolute control of the two Rubber Companies, so that the two Rubber Companies might make any disposition of the Fargo Company and its assets which they saw fit, in their own interest, and to the exclusion of all other creditors."

Fourth. The Circuit Court erred in overruling the exception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master finds that the change in the Board of Directors and officers, and the changes in the by-laws of the Fargo Company, were kept secret in order to allow the Fargo Company an opportunity of getting through embarrassments apparently temporary, but not with a fraudulent intent as to the other creditors of the Company.

"Whereas, the Master should have found that in order to secure and preserve the credit of the Fargo Company and to enable it and its agents to purchase merchandise on credit after January 6, 1896, it was expressly understood and agreed and insisted upon as a part of said January arrangement, by all parties thereto, that the same should be kept and maintained secret and unknown to the world, and that the same were so kept and preserved secret and unknown to the world, with a fraudulent intent as to the other creditors of the Fargo Company."

Fifth. The Circuit Court erred in overruling the exception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master finds that the indebtedness incurred by the Fargo Company for goods purchased after January 6, 1896,

Assignment of errors, filed May 12, 1899.

" which remained unpaid on August 6, 1896, was only $142,630.9
" Whereas, the Master should have found that the amount
" said liabilities remaining unpaid on August 6, 1896, exceed
" $172,000."

Sixth. The Circuit Court erred in overruling the exception fil
by said intervening petitioners to the report of Henry W. Bish
Master in Chancery, filed in said cause on April 17, A. D. 189
which reads as follows:

" For that the Master finds that between January 6, and Aug
" 6, 1896, the Fargo Company reduced its general indebtedness
" a considerable extent;

" Whereas the Master should have found that there is no leg
" evidence in the record showing whether the Fargo Company d
" or did not reduce its said general indebtedness."

Seventh. The Circuit Court erred in overruling the exce
19 tion filed by said intervening petitioners to the report of Hen
W. Bishop, Master in Chancery, filed in said cause on Ap
17, A. D. 1899, which reads as follows:

" For that the Master finds that the Rubber Companies were
" ignorance of the fact that on January 6, 1896, the assets of t
" Fargo Company were insufficient to discharge its indebtedness

" Whereas the Master should have found that the insolvency
" the Fargo Company and its then imminent suspension were t
" first facts called to the attention of the Rubber Companies
" January at the Auditorium meetings, and were the reasons w
" the Rubber Companies' representatives were summoned in C
" cago."

Eighth. The Circuit Court erred in overruling the excepti
filed by said intervening petitioners to the report of Henry W
Bishop, Master in Chancery, filed in said cause on April 17, A. D
1899, which reads as follows:

" For that the Master finds that the advance of $50,000, and t
" giving of the judgment notes and security in question, was the r
" sult of an evident feeling on the part of all the parties to t
" transaction, and in the belief and expectation on their part, th
" through the assistance which was in this way afforded the Far
" Company, it would be enabled to continue its business succes
" fully, and become ultimately relieved of its financial embarra
" ments, and that such arrangement was entered into in go
20 " faith, and without any fraudulent intent;

" Whereas the Master should have found that said January
" arrangement was not the result of any such feeling, belief or e
" pectation, and was not entered into in good faith and witho
" fraudulent intent.

Assignment of errors, filed May 12, 1899.

"And whereas also the Master should have found that the Rubber Companies and their agents had no confidence, either in the financial condition of the Fargo Company, or in the honesty and personal integrity of the Fargos themselves, and therefore secured control of the corporation by controlling its Board of Directors and officers, compelled the Fargo Company to set apart one of the floors as the store room of the Rubber Companies, wherein to keep their consigned goods; to deposit the proceeds arising from the sale of consigned goods in a separate bank account; to keep separate books and records of all transactions between the Rubber Companies and the Fargo Company, and employed every possible agency to protect themselves, as a cautious man would have done had he believed the Fargo Company hopelessly insolvent and the Fargos themselves personally dishonest."

Ninth. The Circuit Court erred in overruling the exception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master finds that the testimony does not show "that the parties were influenced in making the January ar- "rangement, by belief of the insolvency of the Fargo Company at that time, and that the conduct of the corporation afterwards and until about the time of the entering up of the judgment notes, clearly indicated the hope and expectation that the Fargo Company would be finally relieved of its troubles;

"Whereas the Master should have found that the parties were not influenced by any such belief, and that the conduct of the Corporation did not indicate any such hope or expectation, but that on the contrary, the parties were influenced in making the January arrangement, by a firm conviction that the Fargo Company at that time was insolvent, and that its continuance in business could only be temporary, and that the January arrangement was the only possible means by which the Rubber Companies could avoid the almost certain loss of a large proportion of their claims against the Fargo Company, including the consigned goods then on hand, in all amounting to over $300,000."

Tenth. The Circuit Court erred in overruling the exception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master finds that nothing occurred between January 6 and August 6, 1896, inconsistent with the theory that the business of the corporation was carried on with an evident purpose and expectation of continuing same;

Assignment of errors, filed May 12, 1899.

"Whereas, the Master should have found that the course of
"dealing after January 6, 1896, demonstrated that the Rubber
"Companies were substantially convinced during all that period
"that the financial condition of the Fargo Company was practi-
"cally hopeless, and that its final collapse could be only temporarily
"delayed."

Eleventh. The Circuit Court erred in overruling the exceptions filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master finds that on or about August 3, 1896
"Charles E. Fargo stated to the President of the Metropolitan
"Bank that the Fargo Company would be obliged to fail unless it
"received some assistance;

"Whereas the Master should have found that Charles E. Fargo
"did not apply to, or suggest that said Bank should furnish the
"Fargo Company any assistance, but on the contrary it is clearly
"shown by the evidence that Charles E. Fargo called upon the
"President of the Metropolitan Bank, on or about August 4, 1896,
"for the purpose of borrowing $10,000, for the benefit of himself
"and his brothers, and for their private use, and that at this interview
"view he explained to said President that the Fargo Company was
"about to fail, and that all the transactions had by Charles E.
"Fargo with said Bank in relation to said proposed loan of
23 "$10,000 were had in contemplation of the immediate failure
of the Fargo Company."

Twelfth. The Circuit Court erred in overruling the exceptions filed by said intervening petitioners to the report of Henry W. Bishop, Master of Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master finds that the Metropolitan National Bank
"did not know of the change in the Board of Directors or of the
"by-laws of Fargo Company at the time it completed the arrange-
"ment for the loan of $10,000, and the procuring of security for
"its claim against the Fargo Company,

"Whereas the Master should have found that the Metropolitan
"Bank first obtained the two judgment notes for $25,000 each
"and the agreement by which it was to share and pro rate with the
"Rubber Companies in the securities they held, before it paid the
"$10,000 over to Charles E. Fargo, and that said $10,000 were so
"paid, with full knowledge on the part of the Bank concerning the
"January arrangement made with the Rubber Companies, and was
"not in fact, paid over to the Fargos until all the arrangements
"had on August 4, 5 and 6, as shown by the resolutions of the

Assignment of errors, filed May 12, 1899

Fargo Company and the acts of its officers, had been consummated."

Thirteenth. The Circuit Court erred in overruling the exception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master finds that the Metropolitan National Bank "is not shown to have been guilty of any actual fraud as against "complainant and the other creditors of the Fargo Company "by reason of any of its transactions with the Fargo Company or the Rubber Companies;

"Whereas the Master should have found that said Bank was guilty of actual fraud in connection with said transactions, and took its security for the purpose of hindering, delaying and defrauding the other creditors, and with knowledge of the intent with which the securities had been given to the Rubber Companies, and that the Fargos would appropriate the $10,000 loaned to them, to their own sole use and benefit, and place the same beyond the reach of the creditors of the Fargo Company."

Fourteenth. The Circuit Court erred in overruling the exception filed by said entervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master fails to find that owing to the dealings of the Fargo Company and said Rubber Companies in connection with the rubber goods so on hand and in the possession of the Fargo Company on January 2nd and 6th, 1896, said rubber goods were, as between the Forgo Company and its creditors, in fact, the property of the Fargo Company;

"Whereas the Master should have so found."

Fifteenth. The Circuit Court erred in overruling the exception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master fails to find that by reason of the secrecy by which said January arrangement was kept from the knowledge of the public and the Fargo Company's creditors, and by reason of the fact that the business of the Fargo Company was ostensibly carried on as above set forth, by the Fargos, the Fargo Company, between January 6, 1896, and August 6, 1896, was enabled to, and did in fact preserve its credit, and was enabled to, and did in fact purchase and obtain large quantities of merchandise and material on credit, and borrowed large sums of money from a large number of persons, firms and corporations, and had never

Assignment of Errors, filed May 12, 1899.

"paid for the greater part thereof, which part so remaining whol
"unpaid, amounts to the sum of over $172,000, and the Farg
"Company still owes for the same to such firms, persons and co
"porations;

"Whereas the Master should have so found."

Sixteenth. The Circuit Court erred in overruling the exceptio filed by said intervening petitioners to the report of Henry W Bishop, Master in Chancery, filed in said cause on April 17, A. D 1899, which reads as follows:

"For that the Master fails to find that the persons, firms an "corporations from whom the Fargo Company purchased goods "credit and borrowed money between January 6th, 1896, and Au "gust 6th, 1896, as set forth in the preceding exceptions, woul "not, nor would any of them, have sold the Fargo Company an "goods, or loaned them any money after January 6th, 1896, ha "they known of said January arrangement, or had they know "that five of the directors and the secretary and treasurer of th "Fargo Company were the agents of, and controlled by said Rub "ber Companies.

"Whereas the Master should have so found."

Seventeenth. The Circuit Court erred in overruling the ex
26 ception filed by said intervening petitioners to the report o Henry W. Bishop, Master in Chancery, filed in said cause o April 17, A. D. 1899, which reads as follows:

"For that the Master fails to find that the deed of conveyance o "the factory plant at Dixon made by the Fargo Company to th "Bank, was accepted by the Bank in full payment of the sum o "$25,000, part and parcel of the indebtedness of said Fargo Com "pany to the Bank, and that by the execution, delivery and accept "ance of said deed, the indebtedness of said Fargo Company to "said Bank was reduced by at least said $25,000.

"Whereas the Master should have so found."

Seventeenth A. The Circuit Court erred in overruling the ex ception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master fails to find that on or about August 6 "1896, there remained on hand in the possession and control of the "Fargo Company in its place of business in Chicago, Illinois, a large "amount of rubber boots and shoes and other rubber goods, of the "value of at least $100,000, which had been theretofore shipped "to the Eargo Company by the United States Rubber Company "and that after the levies had been made under the executions in "favor of said Rubber Companies, as set forth in the bill of com-

Assignment of errors, filed May 12, 1899.

"plaint, said United States Rubber Company seized and took "all of said rubber goods out of the said place of business and "removed the same from the State of Illinois, and appropriated the same to its own use, and that such appropriation constitutes an illegal preference and is void, and said Company should account for the same to the present creditors of the Fargo Company.

"Whereas the Master should have so found."

Eighteenth. The Circuit Court erred in approving, ratifying and confirming said master's report filed in said cause on April 17, 1899, so far as the same was inconsistent with the exceptions and each of them, filed by said the intervening petitioners, and each of them, in this, that the master should have found that the United States Rubber Company, L. Candee & Company and the Metropolitan National Bank, and each of them, were guilty of fraudulent and inequitable conduct, which resulted in direct loss and injury to the creditors who gave credit to the Fargo Company after January 6, 1896, and that the Metropolitan National Bank, in conjunction with the United States Rubber Company and L. Candee & Company, was guilty of attempting to place a part of the property and assets of the C. H. Fargo Co. beyond the reach of its bona fide creditors, on or about August 6, 1896, in turning over to Charles E. Fargo and his brothers $10,000 and incorporating that amount in its judgment note against C. H. Fargo & Co. and in entering judgment upon their respective judgment notes at that time, and having an assignment of the outstanding accounts made and taking possession of all the property and assets of C. H. Fargo & Co.

Nineteenth. The Circuit Court erred in decreeing that the judgment entered in this court on the sixth day of August, 1896, against C. H. Fargo & Co. in favor of the defendant, the United States Rubber Company, for $145,400; the judgment entered in this court on the sixth day of August, 1896, against C. H. Fargo & Co. in favor of L. Candee & Company for the sum of $38,300; the judgment entered in the Circuit Court of Cook County, Illinois, on the sixth day of August, 1896, against C. H. Fargo & Co. in favor of the Metropolitan National Bank of Chicago; the warranty deed, dated August sixth, 1896, executed by C. H. Fargo & Co. to the Metropolitan National Bank of Chicago, conveying real estate in the City of Dixon, Lee County, Illinois, as set forth in the bill of complaint herein, and the assignment executed August sixth, 1896, by C. H. Fargo & Co. to the defendant, the United States Rubber Company, of all the book accounts, credits, choses in action and bills receivable of said C. H. Fargo & Co. were not at the time believed by the parties to be fraudulent in law, but on the contrary believed to have been within their rights.

Assignment of errors, filed May 12, 1899.

Twentieth. The Circuit Court erred in not decreeing that t judgment entered in this court on the sixth day of August, 18 against C. H. Fargo & Co. in favor of the defendant, the Unit States Rubber Company, for $145 400; the judgment eater
29 in this court on the sixth day of August, 1896, against C. H Fargo & Co. in favor of L. Candee & Company for the sum $38,300, the judgment entered in the Circuit Court of Co County, Illinois, on the sixth day of August, 1896, against C. H Fargo & Co. in favor of the Metropolitan National Bank of Chicag the warranty deed dated August sixth, 1896, executed by C. H Fargo & Co., to the Metropolitan National Bank of Chicago, co vey ing real estate in the City of Dixon, Lee County, Illinois, as s forth in the bill of complaint herein, and the assignment execute August sixth, 1896, by C. H. Fargo & Co., to the defendant, t United States Rubber Company, of all the book accounts, credit choses in action and bills receivable of said C. H. Fargo & Co were, and each of them was fraudulent in fact as against the clai and demands against C. H. Fargo & Co. of the complainant and the said the intervening petitioners, and each of them, and t other creditors of C. H. Fargo & Co. who have filed their cla herein, which arose after January 9th, 1896.

Twenty-first. The Circuit Court erred in finding that at the ti of the appointment of the receiver herein, there was due from H. Fargo & Co. to the United States Rubber Company the sum $142,424.81, said sum having been arrived at by adding interest the amount due from C. H. Fargo & Co. to the United Stat Rubber Company from August 6, 1896, to the time of the trial this cause, to which item or interest said United States Rub Company is not entitled.

30 Twenty-second. Ths Circuit Court erred in finding that the time of the appointment of a receiver herein, there w due from C. H. Fargo & Co. to L. Candee & Company the sum $36,530, said sum having been arrived at by adding interest on t amount due from C. H. Fargo & Co. to L. Candee & Compan from August 6th, 1896, to the time of the trial of this cause, which item of interest L. Candee & Company is not entitled.

Twenty-third. The Circuit Court erred in finding that at t time of the appointment of the receiver herein, there was due fr C. H. Fargo & Co. to the Metropolitan National Bank of Chica the sum of $50,000, because said sum of $50,000 includes the s of $10,000 which was fraudulently turned over by the Metropolit National Bank to C. H. Fargo and his brothers for their own pe sonal uses, on or about August 6th, 1896, and was not a bona fi loan to C. H. Fargo & Co. And because the further sum of $25,

Assignment of errors, filed May 12, 1899.

of said total sum of $50,000 was paid, satisfied and discharged August 6th, 1896, by the execution and delivery by C. H. Fargo Co. to the Metropolitan National Bank of the conveyance of real state in the City of Dixon, mentioned in the decree, and the note idencing said sum of $25,000 was then and there cancelled and rrendered to C. H. Fargo & Co. by said bank.

Twenty-fourth. The Circuit Court erred in decreeing that any f the moneys in the hands of the receiver appointed in this cause, realized or to be realized from the assets of C. H. Fargo & Co. should be paid to the United States Rubber Company, L. Candee & Company, or the Metropolitan National Bank of hicago, or to any or either of them, or that they, or either or any f them should share or participate therein, or in any part thereof.

Twenty-fifth. The Circuit Court erred in not decreeing that the eiver appointed herein, after paying the Master's fees fixed erein at the sum of $1500, and the proper disbursements in the ourse of the administration, including the proper allowance for eiver's and solicitors' fees, to be hereafter determined, should y all the remaining money in his hands realized from the assets C. H. Fargo & Co. to the creditors named in said decree, other an the United States Rubber Company, L. Candee & Company d the Metropolitan National Bank of Chicago, pro rata, according the amounts of their respective claims against C. H. Fargo & o. as specified in said decree.

Twenty-sixth. The Circuit Court erred in not decreeing that the nited States Rubber Company, L. Candee & Company and the etropolitan National Bank of Chicago should not, nor should ther of them, be paid any portion of the moneys in the hands of e receiver appointed herein, realized, or to be realized from the sets of C. H. Fargo & Co. until the claims against said C. H. argo & Co. of the other creditors mentioned in said decree, should first have been paid.

Twenty-seventh. The Court erred in not decreeing that the United States Rubber Company and L. Candee & Company hould be postponed in the distribution of the funds and assets in e hands of the receiver appointed herein until the respective aims against C. H. Fargo & Co. of the intervening petitioners, as ecified in said decree, had been paid in full.

Twenty-eighth. The Court erred in not decreeing that the Metpolitan National Bank of Chicago should be postponed in the disibution of the funds and assets in the hands of the receiver apointed herein, until the respective claims against C. H. Fargo & o. of the above named intervening petitioners, as specified in said ecree, had been paid in full.

Assignment of errors, filed May 12, 1899.

Twenty-ninth. The Circuit Court erred in not decreeing that the United States Rubber Company and L. Candee & Company were guilty of actual fraud in procuring the entry of the judgment entered in this court on the 6th day of August, A. D. 1896, against C. H. Fargo & Co., in favor of the defendant, the United States Rubber Company, for $145,400 and the judgment entered in this court on the 6th day of August, 1896, against C. H. Fargo & Co. in favor of the defendant L. Candee & Company, for the sum of $38,300 and the execution of the assignment on August 6, 1896, by C. H. Fargo & Co. to the defendant, the United States Rubber Company, of all the book accounts, credits, choses in action and bills receivable of said C. H. Fargo & Co.

Thirtieth. The Circuit Court erred in not decreeing that the Metropolitan National Bank of Chicago was guilty of actual
33 fraud in procuring the entry of the judgment entered in the Circuit Court of Cook County, Illinois, on the 6th day of August, 1896, against C. H. Fargo & Co. in favor of the Metropolitan National Bank of Chicago, and the execution of the warranty deed dated August 6, 1896, to said Bank, conveying the real estate in the City of Dixon, Lee County, Illinois, as set forth in said bill of complaint.

Thirty-first. The Circuit Court erred in decreeing that the defendant, the Metropolitan National Bank of Chicago, should reconvey to the receiver appointed in this cause, the real estate in the City of Dixon, Lee County, Illinois, described in the warranty deed dated August sixth, 1896, and executed by C. H. Fargo & Co. to said Bank.

Thirty-second. The Circuit Court erred in overruling the exception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

" For that the Master fails to find that by reason of the control
" which said Rubber Companies exerted over the Fargo Company
" by means of said January arrangement, said Rubber Companies
" from and after January 9, 1896, constituted substantially the
" Fargo Company, and that the goods, wares and merchandise so
" purchased by the Fargo Company from and after January 9,
" 1896, were in substance and in fact, purchased by said Rubber
" Companies;
34 " Whereas the Master should have so found."

Thirty-third. The Circuit Court erred in overruling the exception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

Assignment of errors, filed May 12, 1899.

"For that the Master fails to find that the arrangements entered into and transactions had and done by and between the Bank, Charles E. Fargo, the Fargo Company and the Rubber Companies, on or about August 5, 1896, in relation to the $10,000 turned over by the Bank to the Fargos for their own use, and the taking of the Bank into the scheme of security created by the January arrangement, and the agreements between the Bank and the Rubber Companies to share in the proceeds of the assets of the Fargo Company in proportion to their respective claims, and fixing the Bank's claim at $50,000, constituted an actual fraud upon the general creditors of the Fargo Company;

"Whereas the Master should have so found."

Thirty-fourth. The Circuit Court erred in overruling the exception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master fails to find that the formation of the January arrangement in itself, and the operation of the Fargo Company and the Rubber Companies thereunder were an actual fraud

"on the persons, firms and corporations which sold merchandise

"or loaned money to the Fargo Company from and after Jan-

"uary 6, 1896, and whose claims, or any part thereof, for such merchandise and loans, have not been paid, irrespective of the transactions and arrangements entered into and done by and between the Rubber Companies, Charles E. Fargo, the Fargo Company and the Metropolitan Bank in August, 1896;

"Whereas the Master should have so found."

Thirty-fifth. The Circuit Court erred in overruling the exception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master fails to find that the Rubber Companies at first refused to make any loan or advance to the Fargo Company, and demanded that the Fargo Company should prefer the Rubber Companies to the exclusion of all other creditors, which the Fargo Company refused to do, and stated that if the Rubber Companies refused to advance the $50,000 the Fargo Company would make an assignment and treat all of its creditors on an equality, and that thereupon the Rubber Companies, in order to prevent the Fargo Company from doing this, consented to make the $50,000 advance, on condition that the January arrangement would be carried out;

"Whereas the master should have so found."

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Thirty-sixth. The Circuit Court erred in overruling the ex-
36 ception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master fails to find that from and after January
"2, 1896, the Rubber Companies, if they did not then know, could
"easily have ascertained the true facts as to the financial condition
"of the Fargo Company, and it was their duty so to do, and that
"their failure, or refusal so to do, under the circumstances shown
"by the evidence, constitutes negligence so gross as to amount to
"actual fraud upon the subsequent creditors of the Fargo Com-
"pany;

"Whereas the Master should have so found."

And the said intervening petitioners above named, and each of them, say that in the record of the proceedings aforesaid, there is manifest error, as above alleged, and pray that the said order and decree of said Circuit Court as entered herein on the said fourth day of May, A. D. 1899, may be reversed, corrected and modified in respect to the matters in which the same are erroneous, as above alleged.

United States Leather Company,
By Ashcraft & Gordon,
Its Solicitors.

Lambeau Leather Company,
By Newman, Northrup & Levinson,
Its Solicitors.

The Barber Bros. Company.
Boston Blacking Co.
Bulletin & Good Roads.
Carson, Pirie Monthly Co.
37 Carver Cotton Gin Co.
Calvert Lithographing & Engraving Co.
B. E. Cole & Co.
Coburn, Fuller & Co.
Consumer's Box Manufacturing Co.
The Continent Shoe Company.
Crooks Root & Co.
Cycling Gazette.
Easton Boot & Shoe Company.
Estabrook, Anderson Shoe Co.
Farnsworth, Hoyt & Co.
I. P. Farnum.
C. C. Farwell & Co.
P. A. Field & Co.

Assignment of errors filed May 12, 1899.

Fletcher Mfg. Co.
A. F. Gallum & Sons.
H. M. George & Co.
Goldsmith, Rosenbush & Levie.
Goodyear Rubber Co.
The R. J. Gunning Co.
M. L. Hiller & Sons
A. J. Marcus & Co.
J. & H. Mayer
H. Michaels & Co.
Milwaukee Tack Co.
W. J. McBride
Phable Shoe Co.
Rouse, Maniere, Williams & Co.
Shattuck & Binger
A. W. Shaw & Co.
T. J. Shay & Co.
The Singer Manufacturing Company.
W. W. Spaulding
Spinney Virtue & Co.
Stowe, Bills & Hawley
Thilmany Pulp & Paper Mills
Tubular Rivet & Stud Company
University of Chicago Weekly.
George H. Van Pelt
Wachussetts Mills
Weir Bros. Paper Co.
Consolidated Hand Method Lasting Machine Co.
Hilliard & Merrill
Tripp Giant Leveller Co.
Dry Goods Reporter Co.
E. H. Van Ingen & Co.

By Newman, Northrup & Levinson,
their Solicitors.

Jacob Newman,
S. W. Northrup,
of Counsel.

(Endorsed) Filed May 12, 1899.

S. W. Burnham,
Clerk.

Assignment of errors of American Oak Leather Co. et al,. filed May 12 18 9.

38 And on, to-wit, the same day, the 12th day of May, 189 there was filed in the office of the Clerk of said court, the A signment of Errors of American Oak Leather Company, et al, the following words and figures, to-wit :—

39 United States of America,
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,
In and for said District.

American Oak Leather Company,
vs.
C. H. Fargo & Co., United States Rubber Company, L. Candee & Company, Metropolitan National Bank of Chicago, et al. } In Chancery. No.

ASSIGNMENT OF ERRORS.

And now come American Oak Leather Company, complainant herein, and Pfister & Vogel Leather Company ; Thomas E. Wilder and John Wilder, co-partners as Wilder & Company ; and Eagle Tanning Works, intervening petitioners herein, and assign the following errors upon the order and decree of said Circuit Court entered herein on the fourth day of May, 1899, to wit :

First: The Circuit Court erred in denying on May 4th, 1899, the motion of the American Oak Leather Company to amend the original bill of complaint herein, by showing that the Dixon real estate conveyed by the Fargo Company to the Metropolitan National Bank had since the filing of the original bill been taken from said Bank by the action of other creditors of the Fargo Company, not parties to this record, by enforcing the liens which existed against the property prior to its transfer to the Bank ; and by striking out of the prayer for relief in the original bill the request that the
40 deed should be set aside and the Bank required to convey the property to the Receiver.

Second : The Circuit Court erred in overruling the exceptions and each of the exceptions, filed by the complainant, the American Oak Leather Company, and said the intervening petitioners above named, and each of them, to the report of Henry W. Bishop

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ster in Chancery, filed in the said cause on April 17th, A. D. 899.

ssignment of errors of American Oak Leather Co. et al., filed May 12, 1899.

Third: The Circuit Court erred in overruling the exception filed said complainant and said intervening petitioners to the report Henry W. Bishop, Master in Chancery, filed in said cause on ril 17, A. D. 1899, which reads as follows:

"Because the Master should have found that at the time that Fargo applied to Johnson on January 2, 1896, for assistance on behalf of the Fargo Company, he informed Johnson that the corporation could not pay its debts as they matured in the regular course of business, and that unless it received the assistance which he requested, it would be obliged to fail in business at that time because of its inability to pay its debts; that upon receiving this information, Mr. Johnson endeavored to induce Fargo to give the Rubber Companies security for all their claims, which Fargo refused to do, stating that if the assistance was not given as he requested so that his company was compelled to fail, then he would give no preferences to the Rubber Companies, but would treat all creditors alike."

Fourth: The Circuit Court erred in overruling the exception ed by said complainant and said intervening petitioners to the rt of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"Because the Master, in purporting to state the arrange-
"ment made between the Fargos and the Rubber Companies, with reference to the action of the new directors who were nominated by the counsel for the Rubber Companies, omits to state that it was specifically agreed and was an essential part of the plan, that these new directors were expected to act as might be necessary to guard and protect the interests of Johnson and of the two Rubber Companies under the agreement made between them, and in pursuance of the plan for securing the claims of the Rubber Companies and for preventing other creditors from obtaining any security which might in any wise injure or affect the security proposed to be given to the Rubber Companies."

Fifth: The Circuit Court erred in overruling the exception filed said complainant and said intervening petitioners to the report of enry W. Bishop, Master in Chancery, filed in said cause on April . A. D. 1899, which reads as follows:

"Because the Master has found that the change of the Board of Directors and the officers and the changes of the by-laws of the Fargo Company and the resolution authorizing the judgment notes and assignment of accounts were all for the purpose of giving preferential security to the Rubber Companies, and that the

Assignment of errors of American Oak Leather Co. et al., filed May 12, 1899.

" matter was kept secret in order to allow the Fargo Compan
" an opportunity of getting through embarassments apparent
" temporary, but not with a fraudulent intent as to the oth
" creditors of the Company, and that the only purpose of chan
" ing the Board of Directors and amending the by-laws was
" protect the Rubber Companies against the giving by the Far
" Company of preferential securities or judgment notes to oth
" creditors which should be superior to the security of the Rub
42 " Companies, whereas the Master should have found that
" change in the personnel of the Board of Directors and
" the by-laws of the company was made for the purpose of wi
" drawing from the officers of the company all power of giving
" any other creditor security for his debt and for the purpose
" preventing other creditors from collecting their claims until
" claims of the Rubber Companies were paid in full and that
" essential part of the plan on the part of both parties was that
" should be kept secret, because they all knew that Fargo & Co
" pany could not thereafter obtain goods on credit from any
" who had knowledge or suspicion of the arrangement, and th
" this secrecy was maintained for the purpose of enabling Fargo
" Co. to obtain goods on credit from persons with whom they we
" then about to deal."

Sixth: The Circuit Court erred in overruling the exception file by said complainant and said intervening petitioners to the repo of Henry W. Bishop, Master in Chancery, filed in said cause April 17, A. D. 1899, which reads as follows:

" Because the Master has found that the arrangement as ma
" between the Rubber Companies and the Fargo Company, w
" carried out in good faith by the parties, whereas he should hav
" found that the arrangement was not in good faith but was
" furtherance of a plan to hinder, delay and defraud other credi
" ors."

Seventh: The Circuit Court erred in overruling the exceptio filed by said complainant and said intervening petitioners to the re port of Henry W. Bishop, Master in Chancery, filed in said cau on April 17, A. D. 1899, which reads as follows:

" Because the Master finds that the Rubber Companies were in
" norance of the fact that on January 6, 1896, the assets of th
43 " company were insufficient to dischage its indebtedness, where
" he should have found both from the testimony of Johnso
" Sadler, Beale and the other witnesses in the case, that that was th
" first fact which was called to the attention of the Rubber Co
" panies and was placed before them as the reason why it was ne

Assignment of errors of American Oak Leather Co. et al., filed May 12, 1899.

essary that something should be done in order to prevent the Fargo Company from failing at that particular time."

Eighth: The Circuit Court erred in overruling the exception filed by said complainant and said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A D. 1899, which reads as follows:

"Because the Master finds that the indebtedness incurred by Fargo & Co. for goods purchased after January 6, 1896, which remained unpaid on August 6, 1896, was only $142,690.95, whereas he should have found that the amount of said liabilities remaining unpaid on August 6, 1896, was upwards of $183,000.00."

Ninth: The Circuit Court erred in overruling the exception filed by said complainant and said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"Because the Master finds that between January 6th and August 6th, 1896, the Fargo Company reduced its general indebtedness to a considerable extent, whereas there is no evidence before him justifying that finding."

Tenth: The Circuit Court erred in overruling the exception filed by said complainant and said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"Because the Master's finding that the advance of $50,000, "on January 6, 1896, and the giving of the judgment notes and security referred to, was the result of an evident feeling upon the part of all the parties to the transaction, and was in the belief and expectation on their part that through the assistance which was in this way afforded the Fargo Company, it would be enabled to continue its business successfully and become ultimately relieved of its financial embarrassments and that such arrangement was entered into in good faith and without any fraudulent intent, is not sustained by the evidence, the evidence showing on the contrary, that the whole arrangement of January 6, 1896, was entered into for the purpose of affording such security to the Rubber Companies which involved the hindering and delaying of the other creditors of the company and rendering it impossible for the other creditors of the company to obtain any security whatever for the indebtedness due them in case they applied for the same, or sought such security, and for the purpose of inducing persons to sell goods upon credit to the company in ignorance of the true situation, and by concealing such situation from them and with the express understanding that the then ma-

Assignment of errors of American Oak Leather Co. et al., filed May 12, 1899.

"turing notes of L. Candee & Co., aggregating $44,990.00 shoul
"be paid as they matured absolutely and unconditionally, and whic
"notes matured in January and the following February and March.

Eleventh: The Circuit Court erred in overruling the exceptio filed by said complainant and said intervening petitioners to th report of Henry W. Bishop, master in chancery, filed in said cau on April 17, A. D. 1899, which reads as follows:

"Because the master has found that the testimony does not sho
"that the parties were influenced in making the Januar
45 "arrangement, upon a belief of the insolvency of the Farg
"company at that time, and the conduct of the corporatio
"afterwards and until about the time of the entering up of th
"judgment notes, in the master's judgment, clearly indicated
"hope and expectation that the Fargo Company would be finall
"relieved of its troubles, whereas the testimony shows and th
"master should have found that the conduct of Johnson and th
"Rubber Companies in making the January arrangement, wa
"precisely what would have been done by them if they had know
"of the bankrupt condition of the Fargo Company at that time
"and the testimony shows that Johnson did know of the insolven
"condition of the Fargo Company at that time, and therefore in
"sisted upon the January arrangement as carried out, and thi
"knowledge furnished both the reason for the making of the ar
"rangement, and the method by which it was carried out, an
"included in the arrangement the probable contingency of the fina
"failure of the company by providing for the assignment of all it
"accounts, that Johnson did believe that the Fargo Company wa
"insolvent, is further evidenced by the new and additional precau
"tions taken to protect the interests of the Rubber Companies i
"the consigned goods and the proceeds."

Twelfth: The Circuit Court erred in overruling the exceptio filed by said complainant and said intervening petitioners to the re port of Henry W. Bishop, Master in Chancery, filed in said cau on April 17, A. D. 1899, which reads as follows:

"Because the Master finds that the general creditors of the com
"pany from whom goods were purchased between January an
"August, 1896, were substantialy the same as prior to that period
"whereas such finding is not justified by the evidence, and the evi
"dence shows that goods were purchased from a large number
46 "of new creditors, aside from those mentioned in this re
port."

Thirteenth: The Circuit Court erred in overruling the exceptio filed by said complainant and said intervening petitioners to the re

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687

Assignment of errors of American Oak Leather Co. et al., filed May 12, 1899.

ort of Henry W. Bishop, Master in Chancery, filed in said cause April 17, A. D. 1899, which reads as follows:

"Because the Master erroneously states in his report that on or about August 3rd, 1896, Charles E. Fargo stated to the President of the Metropolitan National Bank that his company would be obliged to fail unless it received some assistance, whereas the fact is, as shown by the evidence, that Charles E. Fargo called upon the President of the Metropolitan National Bank for the purpose of borrowing $10,000 for the benefit of himself and his brothers and for their private uses, according to the testimony: and the Master should have found that at this interview Fargo explained to Mr. Keith that his company was about to fail and his transactions with him with reference to the loan of $10,000, were in contemplation of its immediate failure."

Fourteenth: The Circuit Court erred in overruling the exception filed by said complainant and said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause April 17, A. D. 1899, which reads as follows:

"Because the Master states that at the time of said interviews the said C. E. Fargo represented to the president of said Bank that the said C. H. Fargo & Co. was indebted to him and his brothers for money exceeding $10,000, which they had borrowed upon their notes for the benefit of the company and which "they had paid over to the company for use in its busi- "ness and that said Fargo brothers had put up some bank "stock that they owned as collateral to said notes; and C. E. Fargo thereupon proposed to said bank that if it would loan said C. H. Fargo & Co. $10,000 in addition to its then existing loan, so that said company could reimburse him and his brothers and enable them to take up said notes, he would procure from the said C. H. Fargo & Co. judgment notes for said bank, both for said sum so advanced as aforesaid, and also for notes then remaining due said bank to the amount of $40,000, whereas the Master should have found that Mr. Fargo told Mr. Keith that his company was about to fail; that the Rubber Companies held judgment notes for the amount of their claims and had held them since January; that he and his brothers, in view of the failure of the company, had to have some money for the private benefit of himself and his brothers, and that he wished to have an additional loan of $10,000 made on the company's paper for that purpose, stating that he thought the company owed it to him and his brothers, and that if the bank would advance this money to be used for this purpose, Fargo would obtain for the Bank the the same preferential security for the entire claim, including

Assignment of errors of American Oak Leather Co. et al., filed May 12, 1899.

"$10,000, as the two Rubber Companies had already obtained
"and were about to enforce; that the president of the Bank a
"ceded to this request and loaned $10,000, with knowledge of th
" purpose for which it was intended to be used, and that the mone
" so obtained was thereupon divided between Charles E. Fargo an
" his two brothers."

Fifteenth: The Circuit Court erred in overruling the exceptio
filed by said complainant and said intervening petitioners to the re
port of Henry W. Bishop, Master in Chancery, filed in said cau
on April 17, A. D. 1899, which reads as follows:

48 "Because the Master erroneously finds that the Metro
" politan National Bank did not know of the change in th
" Board of Directors or of the by-laws of Fargo & Company
" the time it completed the arrangement for the loan of th
" $10,000, and the procuring of security for its claim again
" Fargo & Company, whereas he should have found that the Ban
" loaned said money and completed the transaction of obtainin
" security with full knowledge of those facts, and for the purpo
" of getting the same preferences before then given to the Rubb
" Companies."

Sixteenth: The Circuit Court erred in overruling the exceptio
filed by said complainant and said intervening petitioners to the re
port of Henry W. Bishop, Master in Chancery, filed in said cau
on April 17, A. D. 1899, which read as follows:

"Because the Master has found and stated that the Metropolita
" National Bank is not shown to have been guilty of any actu
" fraud as against complainant and the other creditors of the Farg
" Company by reason of any of its transactions with Fargo & Co
" or the Rubber Companies, whereas he should have found th
" said Bank was guilty of actual fraud in connection with su
" transactions, and took its security for the purpose of hinderin
" delaying and defrauding the other creditors and with knowled
" of the intent with which the securities had been given to th
" Rubber Companies."

Seventeenth: The Circuit Court erred in overruling the exce
tion filed by said complainant and said intervening petitioners to h
report of Henry W. Bishop, Master in Chancery, filed in said cau
on April 17, A D. 1899, which read as follows:

"Because the Master should have found that the $10,000, whi
" was advanced by the Metropolitan National Bank in Augus
49 " 1896, was procured by Fargo in the name of the corporation b
" for the personal use of himself and his brothers, and in vio
" of the fact that the corporation was unable to pay all its cre
" itors and was then about to fail, and that its property was to b

Assignment of errors of American Oak Leather Co. et al., filed May 12, 1899.

mmediately seized under executions in favor of the Rubber Com-anies and in favor of the bank, both for its old indebtedness nd for the $10,000 thus added, and that all of these facts were known to the bank at the time it loaned its money and procured he judgment notes and the deed of the Dixon property, and were known also to the represen atives of the Rubber Com-anies at the time they took the assignment of the accounts nd entered judgment on their notes, and at the time they ade the agreement with the bank by which both parties agreed o unite their efforts in the enforcement of their respective laims."

Eighteenth: The Circuit Court erred in approving, ratifying nd confirming said Master's report filed in said cause on April 17, 9, so far as the same was inconsistent with the said exceptions each of them, filed by said complainant, the American Oak ather Company, and said the intervening petitioners, and each them, in this, that the Master should have found that the United tes Rubber Company, L. Candee & Company and the Metropolitan ional Bank, and each of them, were guilty of fraudulent and quitable conduct, which resulted in direct loss and injury to the editors who gave credit to the Fargo Company after January 6th, 6, and that the Metropolitan National Bank, in conjunction h the United States Rubber Company and L. Candee & Com-y, was guilty of attempting to place a part of the property and ets of the C. H. Fargo & Co. beyond the reach of its bona fide creditors on or about August 6th, 1896, in turning over to Charles E. Fargo and his brothers $10,000, and incorporating that amount in its judgment note against C. H. Fargo & Co. in entering judgment upon their respective judgment notes at t time, and having an assignment of the outstanding accounts le and taking possession of all the property and assets of C. H. rgo & Co.

Nineteenth: The Circuit Court erred in decreeing that the judg-nt entered in this court on the sixth day of August, 1896, inst C. H. Fargo & Co in favor of the defendant, the United tes Rubber Company, for $145,000, the judgment entered in this rt on the sixth day of August, 1896, against C. H. Fargo & Co. avor of L. Candee & Company for the sum of $38,300; the judg-nt entered in the Circuit Court of Cook County, Illinois, on the th day of August, 1896, against C. H. Fargo & Co. in favor of Metropolitan National Bank of Chicago; the warranty deed, ed August sixth, 1896, executed by C. H. Fargo & Co. to the tropolitan National Bank of Chicago, conveying real estate in the y of Dixon, Lee County, Illinois, as set forth in the bill of com-

Assignment of errors of American Oak Leather Co. et al., filed May 12 1899.

plaint herein, and the assignment executed August sixth, 1896, C. H. Fargo & Co. to the defendant, the United States Rubb Company, of all the book accounts, credits, choses in action a bills receivable of said C. H Fargo & Co., were not at the time lieved by the parties to be fraudulent in law, but on the contra believed to have been within their rights.

Twentieth: The Circuit Court erred in not decreeing that the jud ment entered in this court on the sixth day of August, 1896, again C. H. Fargo & Co. in favor of the defendant, the United Stat Rubber Company, for $145,400, the judgment entered in th
51 court on the sixth day of August, 1896, against C. H. Far & Co. in favor of L. Candee & Company for the sum of $3 300, the judgment entered in the Circuit Court of Cook Count Illinois, on the 6th day of August, 1896, against C. H Fargo & C in favor of the Metropolitan National Bank of Chicago; the wa ranty deed dated August sixth, 1896, executed by C. H. Fargo Co. to the Metropolitan National Bank of Chicago, co veying real estate in the City of Dixon, Lee County, Illinois, as forth in the bill of complaint herein, and the assignment e ecuted August sixth, 1896, by C. H. Fargo & Co. to the defe ant, the United States Rubber Company, of all the book accoun credits, choses in action and bills receivable of said C. H. Fargo Co., were, and each of them was fraudulent in fact as against t claims and demands against C. H. Fargo & Co. of the complain and of the said the intervening petitioners, and each of them, and t other creditors of C. H. Fargo & Co. who have filed the claims herein, which arose after January 9th, 1896.

Twenty-first: The Circuit Court erred in finding that at t time of the appointment of the Receiver herein, there was due fro C. H. Fargo & Co. to the United States Rubber Company the s of $142,424.81, said sum having been arrived at by adding inter on the amount due from C. H. Fargo & Co. to the United Stat Rubber Company, from August 6th, 1896, to the time of the tr of this cause, to which item of interest said United States Rub Company is not entitled.

Twenty-second: The Circuit Court erred in finding that at t time of the appointment of the receiver herein, there was due fro C. H. Fargo & Co. to L. Candee & Company the sum of $36,530 said sum having been arrived at by adding interest on the amou due from C. H. Fargo & Co. to L. Candee & Company, fro
52 August 6, 1896, to the time of the trial of this cause, to whi item of interest said L. Candee & Company is not entitle

Twenty-third: The Circuit Court erred in finding that at t time of the appointment of the receiver herein, there was due fro

Assignment of errors of American Oak Leather Co. et al., filed May 12, 1899.

H. Fargo & Co. to the Metropolitan National Bank of Chicago sum of $50,000, because said sum of $50,000 includes the sum $10,000, which was fraudulently turned over by the Metropolitan ational Bank to C. H. Fargo and his brothers, for their own per- al uses, on or about August 6, 1896, and was not a bona fide n to C. H. Fargo & Co. And because the further sum of $25,- , of said total sum of $50,000, was paid, satisfied and dis- arged on August 6, 1896, by the execution and delivery by C. Fargo & Co. to the Metropolitan National Bank, of the con- yance of real estate in the City of Dixon, mentioned in the de- e, and the note evidencing said sum of $25,000, was then and re cancelled and surrendered to C. H. Fargo & Co. by said nk.

Twenty-fourth: The Circuit Court erred in decreeing that any the money in the hands of the receiver appointed in this cause, lized or to be realized from the assets of C H. Fargo & Co. uld be paid to the United States Rubber Company, L. Candee & mpany or the Metropolitan National Bank of Chicago, or to any either of them, or that they, or either or any of them, should are or participate therein, or in any part thereof.

Twenty-fifth: The Circuit Court erred in not decreeing that e receiver appointed herein, after paying the Master's fees fixed rein at the sum of $1,500, and the proper disbursements in the rse of the administration, including the proper allowance for receiver's and solicitors' fees, to be hereafter determined, should pay all the remaining money in his hands realized from the assets of C. H. Fargo & Co. to the creditors named in said ree, other than the United States Rubber Company, L. Candee Company and the Metropolitan National Bank of Chicago, pro ta, according to the amounts of their respective claims against C. Fargo & Co. as specified in said decree.

Twenty-sixth: The Circuit Court erred in not decreeing that e United States Rubber Company, L. Candee & Company and the tropolitan National Bank of Chicago, should not, nor should ther of them be paid any portion of the moneys in the hands of e receiver appointed herein, realized, or to be realized from the sets of C. H. Fargo & Co. until the claims against said C. H. rgo & Co. of the other creditors mentioned in said decree, should st have been paid.

Twenty-seventh: The court erred in not decreeing that the ited States Rubber Company and L. Candee & Company should e postponed in the distribution of the funds and assets in the nds of the receiver appointed herein until the respective claims gainst C. H. Fargo & Co. of the above named complainant and

Assignment of Errors of American Oak Leather Co. et al., filed May 12, 1899.

the intervening petitioners, as specified in said decree, had be paid in full.

Twenty-eighth: The court erred in not decreeing that the Me ropolitan National Bank of Chicago should be postponed in the di tribution of the funds and assets in the hands of the receiver a pointed herein, until the respective claims against C. H. Fargo Co. of the above named complainant and the intervening petitio ers, as specified in said decree, had been paid in full.

Twenty-ninth: The Circuit Court erred in not decreeing th

54 the United States Rubber Company and L. Candee & Compan were guilty of actual fraud in procuring the entry of the judgme entered in this court on the 6th day of August, A. D. 1896, again C. H. Fargo & Co., in favor of the defendant, the United State Rubber Company, for $145,400, and the judgment entered in th court on the 6th day of August, 1896, against C. H. Fargo & C in favor of the defendant L. Candee & Company, for the sum $38,300, and the execution of the assignment on August 6, 189 by C. H. Fargo & Co., to the defendant, the United States Rubb Company, of all the book accounts, credits, choses in action a bills receivable of said C. H. Fargo & Co.

Thirtieth: The Circuit Court erred in not decreeing that th Metropolitan National Bank of Chicago was guilty of actual fra in procuring the entry of the judgment entered in the Circuit Cou of Cook County, Illinois, on the 6th day of August, 1896, again C. H. Fargo & Co. in favor of the Metropolitan National Bank Chicago, and the execution of the waranty deeds dated August 1896, to said Bank, conveying the real estate in the City of Dixo Lee County, Illinois, set forth in said bill of complaint.

Thirty-first: The Circuit Court erred in decreeing that the de fendant, the Metropolitan National Bank of Chicago, should reco vey to the receiver appointed in this cause, the real estate in th City of Dixon, Lee County, Illinois, described in the warranty dee dated August sixth, 1896, and executed by C. H. Fargo & Co. t said Bank.

And the said complainant and the intervening petitioners abo named, and each of them, say that in the record of the proceed

55 ings aforesaid, there is manifest error, as above alleged. an pray that said order and decree of said Circuit Court as entere herein on the said fourth day of May, 1899, may be reversed, cor rected and modified, in respect to the matters in which the sam are erroneous, as above alleged.

American Oak Leather Company,
By Smith, Helmer, Moulton & Price,
Its Solicitors.

Assignment of errors of American Oak Leather Co. et al., filed May 12, 1899.

Pfister & Vogel Leather Company,
By Tenney, McConnell, Coffeen & Harding,
Its Solicitors.

Thomas E. Wilder & John Wilder,
as co-partners as Wilder & Company.
By Wm. J. Manning,
Their Solicitor.

Eagle Tanning Works,
By Wm. J. Manning,
Its Solicitor.

Frederick A. Smith.
Samuel P. McConnell.
Horace Kent Tenney.
Wm. J. Manning.
Jacob Newman.
G. W. Northrup, Jr.
Newman, Northrup & Levinson,
Of Counsel.

(Endorsed) Filed, May 12, 1899.

S. W. Burnham,
Clerk.

And on the same day, to wit, the 12th day of May, 1899, in the May Adjourned Term of said Court, in the record of proceedings thereof, before the Honorable William J. Allen, District Judge, appears the following entry, to wit:

Order of May 12, 1899, allowing appeal.

United States of America,
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES.

In and for said District.

Friday, May 12, 1899.

President, Hon. William J. Allen, District Judge.

American Oak Leather Company
vs.
C. H. Fargo & Co., United States Rubber Company, L. Candee & Company, Metropolitan National Bank of Chicago, et al } In Chancery. No.

The Court having on the fourth day of May, A. D. 1899, allowed the defendants herein, United States Rubber Company, L. Candee & Company, and the Metropolitan National Bank of Chicago, an appeal to the United States Circuit Court of Appeals for the Seventh Circuit from a certain decree entered herein on the fourth day of May, 1899, and said defendants having tendered an appeal bond in the matter of said appeal which was approved by the court, and having afterwards, on the fifth day of May, 1899, filed a transcript of the record and proceedings herein, duly certified by the Clerk of this Court, in the Clerk's office of the United States Circuit Court of Appeals, and the said American Oak Leather Com-
57 pany, complainant herein, and Pfister & Vogel Leather Company, Thomas E. Wilder and John Wilder, copartners as Wilder & Company, Eagle Tanning Works, United States Leather Company, Lambeau Leather Company, The Barber Bros. Company, Boston Blacking Company, Bulletin & Good Roads, Carson, Pirie Monthly Co., Carver Cotton Gin Co., Calvert Lithographing & Engraving Co., B. E. Cole & Co., Colburn Fuller & Co., Consumer's Box Manufacturing Co., The Continent Shoe Company, Crooks, Root & Co., Cycling Gazette, Easton Boot & Shoe Co., Estabrook, Anderson Shoe Co., Farnsworth, Hoyt & Co., I. P. Farnum, C. C. Farwell & Co., P. A. Field & Co., Fletcher Mfg. Co., A. F. Gallum & Sons, H. M. George & Co, Goldsmith, Rosenbush & Levie, Goodyear Rubber Co., The R. J. Gunning Co., M. L. Miller & Sons, A. J. Marcus & Co., J. & H.

Mayer, H. Michaels & Co., Milwaukee Tack Co., W. J. McBride, Flexible Shoe Co., Rouse, Maniere, Williams & Co., Shattuck & Singer, A. W. Shaw & Co., T. J. Shay & Co., The Singer Manufacturing Company, W. W. Spaulding, Spinney, Virtue & Co., Stowe, Bills & Hawley, Thilmany Pulp & Paper Mills, Tubular Rivet & Stud Company, University of Chicago Weekly, George H. Van Pelt, Wachusett Mills, Weir Bros. Paper Company, Consolidated Hand Method Lasting Machine Co., Hilliard & Merrill, Tripp Giant Leveller Co., Dry Goods Reporter Co. and E. H. Van Ingen & Co., intervening petitioners herein, having on this twelfth day of May, A. D. 1899, filed a petition herein praying for an appeal from said decree so entered on May fourth, A. D. 1899, together with assignments of errors, and tendered a good and sufficient appeal bond signed by said American Oak Leather Company as Principal, and with sufficient sureties, the Court orders that the said appeal prayed by said complainant and intervening petitioners above named be and the same is hereby allowed to them, and that said appeal bond heretofore tendered by them is hereby approved.

Order of May 12, 1899, allowing appeal.

And on the same day, to wit, the 12th day of May, 1899, there was filed in the office of the Clerk of said Court the Appeal Bond in the following words and figures, to wit:

Know all men by these presents that we, American Oak Leather Company as Principal, and Jacob Newman, F. A. Smith, Horace A. Tenney, as Sureties, are held and firmly bound unto the United States Rubber Company, L. Candee & Company, The Metropolitan National Bank of Chicago and C. H. Fargo & Co., in the full and just sum of One Thousand ($1,000.00) Dollars, to be paid to them, the said United States Rubber Company, L. Candee & Company, The Metropolitan National Bank of Chicago and C. H. Fargo & Co., their certain Attorneys, successors or assigns, to which payment well and truly to be made we bind ourselves, our successors, heirs, executors and administrators, jointly and severally by these presents.

Appeal bond, filed May 12, 1899.

Sealed with our seals and dated this twelfth day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

The condition of the above obligation is such that

Whereas, lately, at a term of the Circuit Court of the United States for the Northern District of Illinois, Northern Division thereof, in a suit depending in said Court, on the Chancery side thereof, wherein the American Oak Leather Company was complainant, and the Intervening Petitioners hereinafter named were Intervening Petitioners, and the said United States Rubber Company, L. Candee & Company, The Metropolitan National Bank of Chicago and C. H. Fargo & Co. were defendants, a decree was rendered on the Fourth (4th) day of May, A. D. 1899.

Appeal bond, filed May 12, 1899.

And whereas, the said American Oak Leather Company, Com plainant, and Pfister & Vogel Leather Company; Thomas E. Wilde and John Wilder, copartners as Wilder & Company; Eagle Tan ning Works; United States Leather Company; Lambeau Leathe Company; The Barber Bros. Company; Boston Blacking Co. Bulletin & Go d Roads; Carson Pirie Monthly Co., Carver Cotto Gin Co., Calvert Lithographing & Engraving Co., B. E. Cole Co., Colburn, Fuller & Co., Consumer's Box Manufacturing 59 Co.; The Continent Shoe Company; Crooks, Root & Co. Cycling Gazette; Easton Boot & Shoe Company; Estabrook Anderson Shoe Co.; Farnsworth, Hoyt & Co.; I. P. Farnum; C C. Farwell & Co.; P. A. Field & Co.; Fletcher Mfg. Co.; A. F Gallum & Sons; H. M. George & Co.; Goldsmith, Rosenbush & Levie; Goodyear Rubber Co.; The R. J. Gunning Co.; M. L Hiller & Sons; A. J. Marcus & Co.; J. & H. Mayer; H. Michael & Co.; Milwaukee Tack Co.; W. J. McBride; Pliable Shoe Co. Rouse, Maniere, Williams & Co.; Shattuck & Binger; A. W Shaw & Co.; T. J. Shay & Co.; The Singer Manufacturing Com pany; W. W. Spaulding; Spinney, Virtue & Co.; Stowe, Bills & Hawley; Thilmany Pulp & Paper Mills; Tubular Rivet & Stu Company; University of Chicago Weekly; George H. Vam Pelt Wachusetts Mills; Weir Bros. Paper Co.; Consolidated Hand Method Lasting Machine Co.; Hilliard & Merrill; Tripp Gian Leveller Co.; Dry Goods Reporter Co.; and E. H. Van Ingen & Co., Intervening Petitioners, have prayed for and obtained an order for an appeal from said decree to the United States Circuit Court of Appeals for the Seventh Circuit.

Now the condition of the above obligation is such that if the said American Oak Leather Company and said other Appellants above named shall prosecute their said appeal with effect, and answer all damages and costs if they shall fail to make good their appeall, then the above obligation to be void, otherwise to remain in fulll force and virtue.

American Oak Leather Company, (Seal)
By Smith, Helmer, Moulton and Price and
Newman, Northrup & Levinson,
Its Solicitors.

Jacob Newman. (Seal)
Frederick A. Smith. (Seal)
Horace K. Tenney. (Seal)

O. K. Isham, Lincoln & Beale.
Follansbee & Follansbee.

(Endorsed) Filed May 12, 1899.

S. W. Burnham,
Clerk.

And on the same day, to-wit, the 12th day of May, 1899, there was filed in the office of the Clerk of said Court the Stipulation waiving transcript of record and to hear both appeals together, in the following words and figures, to-wit:

Stipulation to waive transcript, etc., filed May 12, 1899.

United States of America,
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,
In and for said District.

American Oak Leather Company,
vs.
H. Fargo & Company, United States Rubber Company, L. Candee & Company, Metropolitan National Bank of Chicago, et al. } In Chancery. No.

It is stipulated by and between American Oak Leather Company, complainant herein, and Pfister & Vogel Leather Company, Thomas Wilder and John Wilder, copartners as Wilder & Company, Eagle Tanning Works, United States Leather Company, Lambeau Leather Company, The Barber Bros. Company, Boston Blacking Co., Bulletin & Good Roads, Carson, Pirie Monthly Co., Carver Cotton Gin Co., Calvert Lithographing & Engraving Co., B. E Cole & Co., Calburn, Fuller & Co., Consumer's Box Manufacturing Co., The Continent Shoe Company, Crooks, Root & Co., Cycling Gazette, Easton Boot & Shoe Company, Estabrook, Anderson Shoe Co., Farnsworth, Hoyt & Co., I. P. Farnum, C. C. Farwell & Co., P. A. Field & Co., Fletcher Mfg. Co., A. Gallum & Sons, H. M. George & Co., Goldsmith, Rosenbush & Levie, Goodyear Rubber Co., The R. J. Gunning Co., M. L. Hiller & Sons, A. J. Marcus & Co., J. & H. Mayer, H. Michaels & Co., Milwaukee Tack Co., W. J. McBride, Pliable Shoe Co., Rouse, Saniere, Williams & Co., Shattuck & Binger, A. W. Shaw & Co., E. J. Shay & Co., The Singer Manufacturing Company, W. W. Spaulding, Spinney, Virtue & Co., Stowe, Bills & Hawley, Thilany Pulp & Paper Mills, Tubular Rivet & Stud Company, University of Chicago Weekly, George H. Van Pelt, Wachuetts Mills, Weir Bros. Paper Co., Consolidated Hand Method Lasting

Stipulation to waive transcript, etc., filed May 12, 1899.

Machine Co., Hilliard & Merrill, Tripp Giant Leveller Co., D
Goods Reporter Co. and E. H. Van Ingen & C., intervening pe
tioners herein, and the United States Rubber Company, L. Cand
& Company and the Metropolitan National Bank of Chicago,
follows:

Whereas, this Court did, on the fourth day of May, 1899, all
said defendants the United States Rubber Company, L. Candee
Company and the Metropolitan National Bank of Chicago, an appe
to the United States Circuit Court of Appeals for the Seventh Circ
from the certain decree entered herein on the fourth day of Ma
1899, and afterwards, on the fifth day of May, A. D. 189

62 said defendants filed a transcript of the record and proceedin
herein, duly certified by the Clerk of this Court, in said Cou
of Appeals in the Seventh Circuit; and

Whereas, said complainant and the intervening petitioners abo
named have been heretofore, on the 12th day of May, 1899, al
allowed herein an appeal from the same order or decree from whi
said defendants above named have heretofore appealed as aforesai

It is hereby stipulated that it shall not be necessary for said co
plainant and the intervening petitioners above named to procure an
file in said United States Circuit Court of Appeals for said Seven
Circuit a full and complete transcript of all the record and proce
ings in this cause, in this court, but that the transcript of the reco
filed in said United States Circuit Court of Appeals on the fifth day
May, A. D. 1899, by the said defendants, the United States Rubb
Company, L. Candee & Company and the Metropolitan Nation
Bank of Chicago, on their said appeal to said court, heretofo
taken herein, may be used on said appeal taken herein by the sa
the above named complainant and the interving petitioners abo
named, appellants, on their procuring and filing in said Unit
States Circuit Court of Appeals a supplementary transcript

63 the record of this cause in this court, containing a true, corre
and complete transcript of the record of all proceedings had
this court herein since the certification by the Clerk of this Court
said transcript of the record and proceedings heretofore filed in sa
United States Circuit Court of Appeals on said appeal by the sa
United States Rubber Company, L. Candee & Company and th
Metropolitan National Bank of Chicago.

It is further stipulated that on the filing of said supplementar
record above mentioned in said United States Circuit Court of Ap
peals, said appeal by said complainant and said intervening pet
tioners above named shall be heard in said United Circuit Court
Appeals on said transcript so filed by the said United States Rubb
Company, L. Candee & Company and the Metropolitan Nation

Stipulation to waive transcript, etc., filed May 12, 1899

ak of Chicago, and said supplementary transcript so to be
d by said complainant and said intervening petitioners, in the
ne manner as if a full and complete transcript of the record
ein, showing all the proceedings in this cause in this court, had
en filed in said United States Circuit Court of Appeals by
d complainant and the said intervening petitioners above named,
d also that said appeal by said United States Rubber Company,
Candee & Company and the Metropolitan National Bank of
icago, and also said appeal by said complainant and said inter-
ing petitioners above named, shall be heard together in said
United States Circuit Court of Appeals.

Provided, that if any parts of said record have been omitted in said transcript so filed in said Circuit Court of Appeals, any ty hereto may file a transcript thereof if they see fit.

American Oak Leather Company,
By Smith, Helmer, Moulton & Price,
Its solicitors.

Pfister & Vogel Leather Company,
By Tenney, McConnell, Coffeen & Harding,
Its solicitors.

Thomas E. Wilder & John Wilder,
As copartners as Wilder & Company,
By Wm. J. Manning, Its solicitor.

Eagle Tanning Works,
By Wm. J. Manning, Its solicitor.

United States Leather Company,
By Ashcraft & Gordon, Its solicitor.

Lambeau Leather Company,
By Newman, Northup & Levinson,
Its solicitors.

W. Northrup,
ob Newman,
m. J. Manning,
ederick A. Smith,
muel P. McConnell,
race Kent Tenney.

The Barber Bros. Company,
Boston Blacking Co.,
Bulletin & Good Roads,
Carson-Pirie Monthly Co.,
Carver Cotton Gin Co.,
Calvert Lithographing & Engraving Co.,
B. E. Cole & Co.,
Colburn, Fuller & Co.,

Stipulation to waive transcript, etc., filed May 12, 1899.

Consumer's Box Manufacturing Co.,
The Continent Shoe Company,
Crooks, Root & Co.,
Cycling Gazette,
Easton Boot & Shoe Company,
Estabrook, Anderson Shoe Co.,
Farnsworth, Hoyt & Co.,
I. P. Farnam,
C. C. Farwell & Co.,
P. A. Field & Co.,
Fletcher Mfg. Co.,
A. F. Gallum & Sons,
H. M. George & Co.,
Goldsmith, Rosenbush & Levie,
Goodyear Rubber Co.,
The R. J. Gunning Co.,
H. L. Hiller & Sons,
A. J. Marcus & Co.,
J. & H. Mayer,
H. Michaels & Co.,
Milwaukee Tack Co.,
W. J. McBride,
Pliable Shoe Co.,
Rouse, Maniere, Williams & Co.,
Shattuck & Binger,
A. W. Shaw & Co.,
T. J. Shay & Co.,
The Singer Manufacturing Company,
W. W. Spaulding.
Spinney, Virtue & Co.
Stone, Bliss & Hawley.
Thilmany Pulp & Paper Mill.
Tubular Rivet & Stud Company.
University of Chicago Weekly.
George H. Van Pelt.
Wachusett Mills.
Weir Bros. Paper Co.
Consolidated Hand Method Lasting Machine Co
Hilliard & Merrell.
Tripp Giant Leveller Co.
Dry Goods Reporter Co., and
66 E. H. Van Ingen & Co.

By Newman Northrup & Levinson,
Their Solicitors.

United States Rubber Company and
L. Candee & Company,
By Isham, Lincoln & Beale and
Henry S. Robbins,
Their Solicitors.
Metropolitan National Bank of Chicago,
By Follansbee & Follansbee,
Its Solicitors.

(Endorsed) Filed May 12, 1899.
S. W. Burnham, Clerk.

Northern District of Illinois. }
Northern Division. } ss.

Clerk's certificate.

I, S. W. Burnham, clerk of the Circuit Court of the United States for the Northern District of Illinois do hereby certify the above and foregoing to be a true and complete transcript of the affidavit of Eldridge G. Keith filed in said court on the 7th day of October, 1896, in the cause pending in said court wherein the American Oak Leather Company is complainant and C. H. Fargo & Co., United States Rubber Company, L. C. Candee & Company and Metropolitan National Bank of Chicago are defendants, and also a true and complete transcript of all the proceedings had and papers filed in said cause since the certification by me on May 5, 1899, of the transcript of the record and proceedings in said cause heretofore filed in the United States Circuit Court of Appeals for the Seventh Circuit in the matter of appeal of said United States Rubber Company, L. Candee & Company and the Metropolitan National Bank of Chicago heretofore allowed in said cause, as the same appear from the original files of the records of said court, now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 15th day of May, A. D. 1899.

(Seal.)

S. W. Burnham,
Clerk.

Citation, filed May 12, 1899

68

CITATION.

United States of America } ss.

THE PRESIDENT OF THE UNITED STATES, to the United States Rubber Company, L. Candee & Co., the Metropolitan National Bank of Chicago, and C. H. Fargo & Co.:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Seventh Circuit, to be holden at Milwaukee, in the State of Wisconsin, within thirty days from the date hereof, pursuant to an appeal by American Oak Leather Company, Pfister & Vogel Leather Company, Thomas E. Wilder and John Wilder, copartners as Wilder & Company; Eagle Tanning Works; United States Leather Company; Lambert Leather Company; The Barber Bros. Company; Boston Blacking Co., Bulletin & Good Roads; Carson, Pirie Monthly Co., Carver Cotton Gin Co., Calvert Lithographing & Engraving Co., B. E. Cole & Co., Colburn, Fuller & Co., Consumer's Box Manufacturing Co.; The Continent Shoe Company; Crooks, Root & Co.; Cycling Gazette; Easton Boot & Shoe Company; Estabrook, Anderson Shoe Co., Farnsworth, Hoyt & Co., I. P. Farnum, C. C. Farwell & Co., P. A. Field & Co., Fletcher Mf'g. Co.; A. F. Gallum & Sons; H. M. George & Co., Goldsmith, Rosenbush & Levie; Goodyear Rubber Co., The R. J. Gunning Co., M L. Hiller & Sons; A. J. Marcus & Co., J & H. Mayer; H. Michaels & Co., Milwaukee Tack Co., W. J. McBride; Pliable Shoe Co.; Rouse, Maniere Williams & Co., Shattuck & Binger; A. W. Shaw & Co., T. J. Shay & Co., The Singer Manufacturing Company; W. W. Spaulding; Spinney, Virtue & Co.; Stowe, Bills & Hawley; Thilmany pulp & Paper Mills; Tubular Rivet & Stud Company; University of Chicago Weekly; George H. Van Pelt; Wachusett Mills; Weir Bros. Paper Co.; Consolidated Hand Method Lasting Machine Co.; Hilliard & Merrill; Tripp Giant Leveller Co.; Dry Goods Reporter Co. and E. H. Van Ingen & Co.,

69 intervening petitioners, allowed in open court by the Circuit Court of the United States for the Northern District of Illinois, in a cause wherein said complainant and intervening petitioners above named are appellants, and you are appellees, to show cause, if any there be, why the order and decree entered by said Circuit Court and so appealed from, as shown by the petition for appeal filed by said complainant and intervening petitioners above named, and allowed in said Circuit Court, should not be corrected

d modified, and why speedy justice should not be done to the parties in that behalf. Citation, filed May 12, 1899.

Witness the Honorable William J. Allen, Circuit Judge of the id Circuit Court of the United States, this 12th day of May, in e year of our Lord one thousand eight hundred and ninety-nine.

WILLIAM J. ALLEN,
Judge.

We hereby accept service upon us of the foregoing petition this th day of May. A. D. 1899.

UNITED STATES RUBBER COMPANY, and
L. CANDEE & COMPANY.
By ISHAM, LINCOLN & BEALE and
HENRY S. ROBBINS,
Their Solicitors.

METROPOLITAN NATIONAL BANK OF CHICAGO,
By FOLLANSBEE & FOLLANSBEE,
Its Solicitors.

C. H. FARGO & CO.,
By CRATTY, JARVIS & CLEVELAND,
Its Solicitors.

(Endorsed) Filed May 12, 1899.

S. W. BURNHAM,
Clerk.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held at the United States court rooms in the City of Chicago, in said Seventh Circuit, Monday, the third day of October, 1898, in the October term the year of our Lord one thousand eight hundred and ninety-ht and of our Independence the one hundred and twenty-third.

And afterwards, to-wit: on the fourteenth day of February, 1899, the October term last aforesaid, the following proceedings were and entered of record, to-wit:

Tuesday, February 14, 1899.

Court met pursuant to adjournment.

Present:

Hon. William A. Woods, Circuit Judge.
Hon. James G. Jenkins, Circuit Judge.
Hon. Peter S. Grosscup, Circuit Judge.
Hon. William H. Seaman, District Judge.

ORDER

It is ordered by the court that William H. Seaman, Judge of the trict Court of the United States for the Eastern District of Wisnsin, be and he is hereby designated and assigned to sit in this urt as a member thereof during the present session. Thereupon d Seaman appeared and took his seat as a member of said court.

And afterwards, to-wit: On the fifth day of May, 1899, in the October term last aforesaid, came the appellants, The United tes Rubber Company, L. Candee and Company and the Metroolitan National Bank of Chicago, by their counsel, Mr. Edward S. ham, Mr. William G. Beale, Mr. Henry S. Robbins, Mr. Gilbert E. rter, Mr. George A. Follansbee and Mr. Mitchell D. Follansbee, and d their appearance in the office of the clerk of this court, said earance being in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

No. 598.—October Term, 1898.

United States Rubber Company, L. Candee & Company and the Metropolitan National Bank of Chicago,
vs.
The American Oak Leather Company et al.

The clerk will enter our appearance as Counsel for the Appellants.

EDWARD S. ISHAM,
WILLIAM G. BEALE,
HENRY S. ROBBINS,
GILBERT E. PORTER,
For Appellants United States Rubber Company and L. Candee & Company.

GEORGE A. FOLLANSBEE,
M. D. FOLLANSBEE,
For Appellants Metropolitan National Bank.

(Endorsed) Filed May 5, 1899.

EDWARD M. HOLLOWAY,
Clerk.

And afterwards, to-wit: on the eighth day of May, 1899, in the October Term last aforesaid, in the record of proceedings thereof in said entitled cause, appears the following entry, to-wit:

706 Monday, May 8, 1899.

Before: Hon. William A. Woods, Presiding Judge.

United States Rubber Company, L. Candee & Company and Metropolitan National Bank,
598. vs.
American Oak Leather Company et al.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

On motion of counsel for appellants, it is hereby ordered that

printed portions of the record used in the Circuit Court on the ring of the cause may be used by the Clerk of this Court in mak- up the printed copies of the transcript of record to be filed herein, vided said printed portions of the record used in the said Circuit urt conform or are made to conform to the rules of this court re- ting the printing of the transcript of the record.

And afterwards, to-wit: on the twelfth day of May, 1899, in the October Term last aforesaid, came the appellees, by their unsel, Mr. Edwin M. Ashcraft and Mr. Newton F. Gordon, and ed their appearance in the office of the clerk of this court, said pearance being in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

No. 598.—October Term, 1898.

United States Rubber Co. et al.,
Appellants,
vs.
The American Oak Leather Co. et al.

The Clerk will enter my appearance as Counsel for the Appellee.

E. M. ASHCRAFT.
NEWTON F. GORDON.

(Endorsed) Filed May 12, 1899.

EDWARD M. HOLLOWAY,
Clerk.

And afterwards, on the same day, to-wit: On the twelfth day of May, 1899, in the October term last aforesaid, came the appellees, by their counsel, Mr. Samuel P. McConnell and Mr. Horace Kent Tenney, and filed their appearance in the office of the clerk of this court, said appearance being in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

708 For the Seventh Circuit.

No. 598.—October Term, 1898.

United States Rubber Co. et al., Appellants,
vs.
The American Oak Leather Co. et al.

The Clerk will enter my appearance as Counsel for the Appellees.

SAMUEL P. McCONNELL.
HORACE KENT TENNEY.

(Endorsed) Filed May 12, 1899.

EDWARD M. HOLLOWAY, Clerk.

And afterwards, to-wit, on the thirteenth day of May, 1899, in the October term last aforesaid, came the Appellees, the Eagle Tanning Works and Thomas E. and John E. Wilder, co-partners as Wilder & Co., by their counsel, Mr. William J. Manning, and filed in the office of the clerk of this court his appearance, said appearance being in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

No. 598.—October Term, 1898.

United States Rubber Co. et al., Appellants,
vs.
The American Oak Leather Co. et al.

The Clerk will enter my appearance as Counsel for the Appellees Eagle Tanning Works and Thos. E. and John E. Wilder, co-partners as Wilder & Co.

WM. J. MANNING.

(Endorsed) Filed May 13, 1899.

EDWARD M. HOLLOWAY, Clerk.

And afterwards, to-wit: On the fifteenth day of May, 1899, in the October term last aforesaid, came the Appellees, by their counsel Jacob Newman and Mr. George W. Northrup, and filed in the office of the clerk of this court their appearance, said appearance being in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

No. 598.—October Term, 1898.

United States Rubber Co. et al., Appellants,
vs.
The American Oak Leather Co. et al.

The Clerk will enter my appearance as Counsel for the Appellees.

JACOB NEWMAN.
G. W. NORTHRUP.

(Endorsed) Filed May 15, 1899.

EDWARD M. HOLLOWAY, Clerk.

And afterwards, to-wit: On the nineteenth day of May, 1899, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Friday, May 19, 1899.

Before:
Hon. William A. Woods, Circuit Judge.
Hon. James G. Jenkins, Circuit Judge.
Hon. William H. Seaman, District Judge.

United States Rubber Company et al.
vs.
American Oak Leather Company et al.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Upon motion of Mr. Jacob Newman, counsel for appellees, it is ordered that cause No. 599, American Oak Leather Company et al. vs. United States Rubber Company et al. may be argued in connec-

tion with this cause and that only one brief may be filed by each par in both causes, and if so filed, they shall be filed on the date prescrib by the rules of this court in which briefs in this cause may be filed.

And afterwards, to-wit: On the sixth day of June, 1899, in t October term last aforesaid, the following further proceedings we had and entered of record, to-wit:

Tuesday, June 6, 899.

Before:

Hon. Henry B. Brown, Circuit Justice.
Hon. William A. Woods, Circuit Judge.
Hon. James G. Jenkins, Circuit Judge.

United States Rubber Company et al.
598 vs.
American Oak Leather Company et al.

Appeal from the Circuit Court of the United States for the Nort ern District of Illinois, Northern Division.

It is ordered by the court that this cause be, and the same is hereb set down for hearing June 9, 1899.

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711 And afterwards, to-wit: On the ninth day of June, 1899, i the October term last aforesaid, the following further proceed ings were had and entered of record, to-wit:

Friday, June 9, 1899.

Before:

Hon. Henry B. Brown, Circuit Justice.
Hon. William A. Woods, Circuit Judge.
Hon. James G. Jenkins, Circuit Judge.

United States Rubber Company et al.
598 vs.
American Oak Leather Company et al.

Appeal from the Circuit Court of the United States for the Nort ern District of Illinois, Northern Division.

Now this day come the parties by their counsel and this cause no comes on to be heard on the printed record and briefs of counsel an on oral arguments by Mr. Henry S. Robbins and Mr. George A. Fo

counsel for appellants, and by Mr. Jacob Newman and Mr. k A. Smith, counsel for appellees, and the court having he same, takes this matter under advisement.

nd on the fifteenth day of May, 1899, in the October term last resaid, came the appellants, by their counsel, Mr. Jacob New- r. Frederick A. Smith, Mr. William J. Manning, Mr. Samuel P. ell, Mr. Horace Kent Tenney and Mr. George W. Northrup, d in the office of the clerk of this court their appearance, which earance was in the words and figures following, to-wit:

NITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

No. 599.—October term, 1898.

can Oak Leather Company et al.,
vs.
States Rubber Co., L. Candee &
Metropolitan National Bank of
ago e al.

Clerk will enter our appearance as Counsel for the Appel-

JACOB NEWMAN.
FREDK. A. SMITH.
WM. J. MANNING.
SAMUEL P. McCONNELL.
HORACE KENT TENNEY.
GEORGE W. NORTHRUP, JR.

lorsed) Filed May 15, 1899.
EDWARD M. HOLLOWAY,
Clerk.

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l afterwards, to wit: On the sixteenth day of May, 1899, in the r term last aforesaid, came the appellees, United States Rubber any and L. Candee & Co., by their counsel, Mr. Edward S. , Mr. Willi m G. Beale, Mr. Henry S. Robbins and Mr. Gilbert rter, and filed in the office of the clerk of this court, their appear- said appearance being in the words and figures following, to-

UNITED STATES CIRCUIT COURT OF APPEALS.

713 For the Seventh Circuit.

No. 599.—October Term, 1898.

American Oak Leather Co. et al.
Appellants,
vs.
United States Rubber Co. et al.

The clerk will enter my appearance as Counsel for the Appellees U. S. Rubber Co. and L. Candee & Co.

EDWARD S. ISHAM,
WILLIAM G. BEALE,
HENRY S. ROBBINS,
GILBERT E. PORTER,
Counsel for U. S. Rubber Co. and L. Candee & Co.

(Endorsed) Filed May 16, 1899.

EDWARD M. HOLLOWAY,
Clerk.

And afterwards, to-wit: on the same day, to-wit: On the sixteenth day of May, 1899, in the October Term last aforesaid, came the Appellants by their counsel, Mr. Frank A. Helmer, and entered his appearance in the office of the clerk of this court, said appearance being in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

No. 599.—October Term, 1898.

American Oak Leather Company et al.,
Appellants,
vs.
United States Rubber Company et al.

The clerk will enter my appearance as Counsel for the Appellants.

FRANK A. HELMER.

(Endorsed) Filed May 16, 1899.

EDWARD M. HOLLOWAY,
Clerk.

And afterwards, to-wit: On the eighteenth day of May, 1899, in the October Term last aforesaid, came one of the Appellees, the Metropolitan National Bank of Chicago, by its counsel, Mr. George A. Follansbee and Mr. Mitchell D. Follansbee, and filed their appearance in the office of the clerk of this court, said appearance being in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

No. 599.—October Term, 1899.

American Oak Leather Co. et al.,
Appellants,
vs.
United States Rubber Co. et al.

The clerk will enter our appearance as Counsel for the Appellee, the Metropolitan National Bank of Chicago.

GEORGE A. FOLLANSBEE.
MITCHELL D. FOLLANSBEE.

(Endorsed) Filed May 18, 1899.
EDWARD M. HOLLOWAY,
Clerk.

And afterwards, to-wit: On the nineteenth day of May, 1899, at the October term last aforesaid, came the American Oak Leather Company et al., by their counsel, Mr. Frederick A. Smith, Mr. Jacob Newman, Mr. S. P. McConnell, Mr. Horace K. Tenney, Mr. William Manning and Mr. George W. Northrup, Jr., and filed in the office of the clerk of this court a notice of motion and acceptance of same, said notice and acceptance being in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States Rubber Company et al., Appellants,
vs.
American Oak Leather Company et al., Appellees } Appeal from United States Circuit Court

American Oak Leather Company et al., Appellants,
vs.
United States Rubber Company et al., Appellees. } Appeal from United States Circuit Court

To Messrs. Edward S. Isham, William G. Beale, Henry S. Robbins, Gilbert E. Porter, George A. Follansbee and Mitchell D. Follansbee, of Counsel for the United States Rubber Company; L. Candee & Company and the Metropolitan National Bank of Chicago.:

Gentlemen: Please take notice that to-morrow, Friday, May 19th, 1899, at the opening of court, or as soon thereafter as counsel can be heard, or if the court be not sitting, then in chambers, we shall ask for an order that said appeals be heard together, on the record filed by you, and the supplemental record filed by us, in pursuance of a stipulation heretofore entered into in that regard, and for other appropriate orders in that connection which the court may deem advisable, at which time and place you may be present if you see fit.

Yours truly,

FREDERICK A. SMITH,
JACOB NEWMAN,
S. P. McCONNELL,
HORACE K. TENNEY,
WILLIAM J. MANNING and
GEORGE W. NORTHRUP, Jr.,
Of Counsel for American Oak Leather Co. et al.

Received copy of above notice this 18th day of May, A. D. 1899.

ISHAM, LINCOLN & BEALE.

GILBERT E. PORTER,
FOLLANSBEE & FOLLANSBEE.
HENRY S. ROBBINS.

(Endorsed) Filed May 19, 1899.

EDWARD M. HOLLOWAY,
Clerk.

And afterwards, to-wit: On the sixth day of June, 1899, in the October term last aforesaid, the following proceedings were had in above entitled cause and entered of record, to-wit:

Tuesday, June 6, 1899.

Before:
Hon. Henry B. Brown, Circuit Justice.
Hon. William A. Woods, Circuit Judge.
Hon. James G. Jenkins, Circuit Judge.

American Oak Leather Company et al.
vs.
United States Rubber Company et al.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

It is ordered by the court that this cause be, and the same is hereby set down for hearing June 9, 1899.

And afterwards, to-wit: On the ninth day of June, 1899, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Friday, October 9, 1899.

Before:
Hon. Henry B. Brown, Circuit Justice.
Hon. William A. Woods, Circuit Judge.
Hon. James G. Jenkins, Circuit Judge.

American Oak Leather Company et al.
vs.
United States Rubber Company et al.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Divison.

Now this day come the parties by their counsel, and this cause now comes on to be heard on the printed record and briefs of counsel, and on oral arguments by Mr. Jacob Newman and Mr. Frederick A. Smith, counsel for appellants, and by Mr. Henry S. Robbins and Mr. George A. Follansbee, counsel for appellees, and the court having heard the same takes this matter under advisement.

718 At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held at the United States Court rooms, in the City of Chicago in said Seventh Circuit, on Tuesday, October 3, 1899, in the October term, in the year of our Lord one thousand eight hundred and ninety-nine and of the Independence the one hundred and twenty-fourth.

And afterwards, to-wit: On the third day of October, 1899, in the October term last aforesaid, there was filed in the office of the clerk of this court the opinion of the court in the above entitled causes, said opinion being in the words and figures following, to-wit:

THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 598, 599.—June Session, 1899.

598.

ITED STATES RUBBER COMPANY, A CORPORATION, L. CANDEE & CO., A CORPORATION, AND METROPOLITAN NATIONAL BANK OF CHICAGO, A CORPORATION,

Appellants,

vs.

E AMERICAN OAK LEATHER COMPANY, W. J. McBRIDE, ESTABROOK-ANDERSON SHOE COMPANY, LAMBEAU LEATHER COMPANY, UNIVERSITY OF CHICAGO WEEKLY, CROOKS, ROOT & CO., THILMANY PULP & PAPER MILLS, THOMAS E. AND JOHN E. WILDER, UNITED STATES LEATHER COMPANY, PFISTER & VOGEL LEATHER COMPANY, EAGLE TANNING WORKS.

599. **Cross Appeal.**

MERICAN OAK LEATHER COMPANY, PFISTER & VOGEL LEATHER COMPANY, THOMAS E. WILDER AND JOHN WILDER, CO-PARTNERS AS WILDER & COMPANY, EAGLE TANNING WORKS, UNITED STATES LEATHER COMPANY, LAMBEAU LEATHER COMPANY, THE BARBER BROS. COMPANY, BOSTON BLACKING CO., BULLETIN & GOOD ROADS, CARSON-PIRIE MONTHLY CO., CARVER COTTON GIN CO., CALVERT LITHOGRAPHING & ENGRAVING CO., B. E. COLE & CO., COLBURN, FULLER & CO., CONSUMERS' BOX MANUFACTURING CO., THE CONTINENT SHOE COMPANY, CROOKS, ROOT & CO., CYCLING GAZETTE, EASTON BOOT & SHOE COMPANY, ESTABROOK-ANDERSON SHOE COMPANY, FARNSWORTH, HOYT & CO., I. P. FARNUM, C. C. FARWELL & CO., P. A. FIELD & CO., FLETCHER MF'G CO., A. F. GALLUM & SONS, H. M. GEORGE & CO., GOLDSMITH, ROSENBUSH & LEVIE, GOODYEAR RUBBER CO., THE R. J. GUNNING CO., M. L. HILLER & SONS, A. J. MARCUS & CO., J. & H. MAYER, H. MICHAELS & CO., MILWAUKEE TACK CO., W. J. McBRIDE, PLIABLE SHOE CO., ROUSE, MANIERE, WILLIAMS & CO., SHATTUCK & BINGER, A. W. SHAW & CO., T. J. SHAY & CO., THE SINGER MANUFACTURING CO., W. W. SPAULDING, SPINNEY, VIRTUE & CO., STOWE, BILLS & HAWLEY, THILMANY PULP & PAPER MILLS, TUBULAR RIVET & STUD COMPANY, UNIVERSITY OF CHICAGO WEEKLY, GEORGE H. VAN PELT, WACHUSETT MILLS, WEIR BROS. PAPER CO., CONSOLIDATED HAND METHOD LASTING MACHINE CO., HILLIARD & MERRILL, TRIPP GIANT LEVELLER CO., DRY GOODS REPORTER CO. AND E. H. VAN INGEN & CO.

vs.

NITED STATES RUBBER COMPANY, L. CANDEE & CO. THE METROPOLITAN NATIONAL BANK OF CHICAGO, AND C. H. FARGO & CO.

ppeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Before BROWN, *Circuit Justice*, and WOODS and JENKINS, *Circuit Judges.*

We have here an appeal and cross appeal. They are from a final rendered in conformity with the master's report of his con-

720 clusions on the evidence, and in accord with the theory of the
terlocutory order affirmed by this court in *United States*
ber Co. v. *Am. Oak Leather Co.* 53 U. S. App. 444, 27 C
A. 118. The defendants, the rubber companies and the Metro
itan National Bank, dispute that theory and insist that the pro
ences which they obtained were valid. The original complainan
and other creditors who intervened, have brought the cross ap
and insist that the fund in court should be applied to the discha
of their demands, and that in so far as the decree permits the
fendants to share in the fund it is erroneous. The character of
case, as now presented, is not deemed to be essentially differ
from what it was before, but a fuller statement of the facts is
sirable.

The corporation, C. H. Fargo & Co., successor to a partners
of the same name, was organized in 1889 to do a mercantile bu
ness in Chicago. In 1893 it became embarrassed, and being large
indebted to the rubber companies, the United States Rubber Co
bany of New Jersey and L. Candee & Company of Connecticut, a
to the Metropolitan National Bank of Chicago, and being compel
to yield to the demand of the latter for security, execu
judgment notes to the bank for $130,000 and to the rubber co
panies for sums aggregating $200,000, those companies not only
but accepting security because the bank exacted it. The Fa
company had an agreed line of credit with the bank to the amo
of $50,000, which was sometimes exceeded. The judgment no
given in 1893 were paid in part, from time to time, and before t
close of 1895 were surrendered and ordinary promissory no
taken for the unpaid balances. On December 30 or 31, 189
corporation being again unable to meet its maturing obligatio
sent telegraphic messages to the rubber companies, in respons
which Charles L. Johnson and Huston M. Sadler Jr., as represen
tives of those companies, which some months before had beco
one in interest, went to Chicago, arriving January 2, 1896, and
the evening of that day commenced with Charles E. Fargo negot
tions which on the 6th terminated in the agreement, the charact
of which is now the subject of dispute. In those negotiation
Johnson and Sadler were assisted and advised by the local coun
of the rubber companies, Mr. Wm. G. Beale, who was present
most of the interviews. At that time there was due from the Fa
company to L. Candee & Co. as evidenced by notes given in set
ment the preceding November, $44,900, to the United States Rub
Company on open account for the proceeds of sales of consigned goo
$141,537.13, to the Metropolitan Bank $50,000, and to other
$210,216.20—a total of $416,653.33. The value of the assets

that time was not definitely ascertained, but was represented by the Fargos to exceed largely the liabilities. In fact it was much

Johnson, on arrival, was told of the company's embarrassment was asked to have his companies make a loan of 00 to meet paper soon to mature. He refused the st and solicited security for what was owing to his com- s, urging that on account of what they had done in 1893 they entitled to preference over other creditors. That meant and understood to mean an immediate suspension of business, and refused by Charles Fargo, who insisted that a failure was not ssary, and that if they had to go to the wall they would treat editors alike. The negotiations then proceeded but without until January 6th, the whole effort for four days, so far as sed, being expended in the endeavor to devise a plan whereby rubber companies could be made absolutely secure and the go company be able to continue in business. The idea of put- the board of directors under control of the rubber companies hav- been suggested, and it having been determined that loan had better be $50,000, Johnson, acting for L. Candee Co. then proposed to lend the Fargo company $50,000 ix months, upon the understanding that the loan and the pre- s indebtedness for $44,900, and the debt due and to become to the United States Rubber Company "should be secured in way as might be satisfactory to their counsel, Mr. Beale." proposition was accepted on the same day, and, as the master's rt proceeds to say, "it was agreed and arranged between the ies as follows:

First: That the $50,000 should be advanced to the Fargo com- y by L. Candee & Co., partly on that date and during the suc- ding two weeks:

Second: That the Fargo company should that day execute and ver its three judgment notes, one for $45,000 payable on de- nd to the order of L. Candee & Company to secure that company h respect to its liability as endorser or guarantor upon the notes $44,900 given previous to January, 1896, one for $51,500 pay- e on demand to L. Candee & Company, as collateral security to ain notes of the Fargo company which were given as evidence of advance of $50,000 then to be made, and one for $140,000 payable demand to the order of the United States Rubber Company, as ateral security to the then existing and to any future indebted- ss of the Fargo company to the United States Rubber Company aforesaid.

Third: That in case the Fargo company should at any time find necessary to suspend business, it would assign as additional se-

722 curity all its accounts and bills receivable; that it should n
give any judgment notes to other creditors which would imp
the security to the Rubber companies, and that the $50,000 adva
should be used by the Fargo company in reduction of its gene
indebtedness as it matured; and

Fourth: That the four employees of the Fargo company w
were on the board of directors, and also E. A. Fargo, should ret
from the board and there should be elected in their places by t
stockholders of the company five persons, to be nominated by s
Beale, in whom he had confidence, one of whom should become s
retary and treasurer, and that the directors so to be elected
Beale's nomination should not hamper or interfere with the prop
carrying on of the ordinary business of the company."

On the same day a meeting of the board of directors of the Far
company as then and theretofore constituted was held, at which w
passed a resolution authorizing the borrowing of the $50,000 a
the giving of judgment notes therefor and for existing indebtedne
as stipulated; and accordingly three judgment notes "were execut
and delivered by Charles E. Fargo, President of the compan
Frank M. Fargo, Vice-President and Treasurer, and E. A. Farg
Secretary, and the loan of $50,000 was perfected, $10,000 being a
vanced at the time and the balance of the 50,000 during the s
ceeding two weeks." This action was ratified on the 8th day
January, 1896, by the unanimous vote of the stockholders of t
company, all the shares being represented. The three Fargos h
been for some time the owners of all the shares. An effort w
made to reduce to writing the understanding, but Charles Fargo
sisted upon terms to which Mr. Beale would not assent, and M
Johnson, who was on his way eastward, being informed of the si
ation, sent from Altoona, Pa., on January 7th, a telegram to M
Beale containing the following:

"Sadler has explained the situation to me. Think posit
should be made absolute as soon as possible, by completing arran
ment as arranged, and organization of directors to prevent giv
other judgment notes. . . . Failure thus to protect us, sho
result in executions by us. Use, at your discretion, all judgme
notes in your possession, in order to put our claim beyond per
venture."

This having been read to Mr. Fargo he consented to trust Joh
son in the matter without a written agreement.

At a meeting of the stockholders on January 9, 1896, George G
Madison, Tiffany Blake, Buell McKeever, Frederick B. Fuller, G
bert E. Porter, Charles E. Fargo and Frank M. Fargo were elect
directors for the ensuing year, all except the Fargos and Bla

being employes in the office of Beale, and Blake being assistant corporation counsel of the city of Chicago, of which Beale was n corporation counsel; and all except the Fargos were chosen at suggestion of Beale. At a meeting on the same day of the newly ted board Charles E. Fargo was reelected president of the com-, Frank M. Fargo vice-president, Buell McKeever was made retary and treasurer, and the by-laws of the company were so nded as to forbid the giving of judgment notes or preferential urity without special authorization from the board of directors. e change of the board of directors and officers, the change in the -laws, and the resolution authorizing the execution of judgment es and an assignment of accounts, the master reported, "were for the purpose of giving preferential security to the rubber panies, and the matter was kept secret in order to allow the rgo company an opportunity of getting through embarrassments parently temporary but not with a fraudulent intent as to the er creditors of the company." The report then proceeds: "The y purpose and object of changing the board of directors as afore-d and of amending the by-laws was to protect the rubber com-nies against the giving by the Fargo company of preferential urity or judgment notes to other creditors, which should be su-rior (or equal?) to the security of the rubber companies. . . . he arrangement as made was carried out in good faith by the par-s and the directors elected at the suggestion of said Beale took part in the active management of the Fargo company after their ction, and no stockholders' and directors' meetings of the Fargo mpany were held after January 9th, 1896, until August 5th, 896."

It further appears that between January 6 and August 6, 1896, ew liabilities were incurred by the Fargo company to creditors other than the rubber companies and the bank to the amount of $246,660.54, of which there was due and unpaid in August 6, 1896, $142,690.95, and during the same period the Fargo company paid to general creditors in the regular course of business more than $300,000, paying all of the indebtedness of January 6, 1896, which was largely to persons who are now creditors. Charles and Frank Fargo were personally liable upon portions of the debts of the company in January, and those portions were paid off before August. The original debt of $44,900 to the Candee company was paid and $13,470 on the loan of $50,000. To the United States Rubber Company as much as $15,000 was paid on old indebtedness, but additional consigned goods were sold to the amount of $24,534.04, of which the sum of $5,534.04 only was remitted, so that the sum due that company on August 6

724 was $142,424.81, and there was due to L. Candee & Co. $36,

All credit given to the Fargo company after January 9, exc by the rubber companies and $10,000 by the bank, was gi in ignorance of the execution of the judgment notes to t rubber companies, of the change of directors and offic and of the arrangement existing between the rubber co panies and the Fargo company. Of the liabilities so c tracted the amount still unpaid exceeds $110,000. Besi the mere ignorance of the facts reported by the master, the e dence shows that in order to obtain credit of the banks at Dix was represented in response to direct inquiry that the company h given no judgment notes, and to the representative of another cr itor, the Päster & Vogel Leather Company, seeking payment security, Charles E. Fargo, while denying that he had made direct statement that the company had given no judgment note admitted that in response to inquiry he had made evasive answ likely to produce, and which he intended to produce, that beli His testimony on the point presents an interesting picture of one w in all this transaction is credited with having had no wrongf purpose. About the last of July it became evident th a collapse was inevitable, and with that result in view Char Fargo, desiring money for the individual uses of himse and brothers, sought to obtain for the company fr the Metropolitan Bank, to which there was then owi $40,000 unsecured, an additional $10,000. His plan was to ha the bank admitted into the arrangement with the rubber compani and for the purpose of obtaining the consent of those companies went to New York. He obtained the desired consent, but, accor ing to the testimony of Mr. Sadler, without revealing the purp to cease business. Mr. Sadler returned with him or after a day two followed him to Chicago, but for what purpose is not disclose Though not admitted it is difficult to believe that he left Chica without knowledge of what was being and about to be done.

In respect to the coming of the bank into the arrangement wi the rubber companies the master found, among other things, "th C. H. Fargo represented to the president of the bank that C. H Fargo & Co. was indebted to him and his brothers for mon exceeding $10,000, which they had borrowed upon their notes f the benefit of the company and which they had paid over to t company for use in its business, and that said Fargo brothers h put up some bank stock that they owned as collateral to said note and C. E. Fargo thereupon proposed to said bank that if it would le said C. H. Fargo & Co. $10,000 in addition to its then existi loan, so that said company could reimburse him and his broth

and enable them to take up said notes, he would procure from the said C. H. Fargo & Co. judgment notes for said bank, both for said sum so advanced as aforesaid, and also for the notes then remaining due said bank to the amount of $40,000." Without a further rehearsal of details, it is sufficient to state that the bank was informed of the arrangement with the rubber companies, consented to join in it, advanced the additional $10,000, making its entire demand $50,000, received therefor two judgment notes for $25,000 each, accepted in immediate payment of one of them a conveyance by the Fargo company of its manufacturing establishment and plant at Dixon, and contemporaneously entered into an agreement with the rubber companies that each would account to the other, and divide all sums realized pro rata according to the amounts of their respective claims. The bank and the rubber companies proceeded at once to take judgments and to cause executions to be issued and levied. The accounts of the Fargo company were assigned to the rubber companies as stipulated, and were placed in the hands of Mr. Beale's firm for collection—an arrangement which was continued by order of the circuit court, and the amounts realized therefrom and from the disposition of the property by the marshal have been duly reported.

Exceptions were filed to the master's report by the American Oak Leather Company, and by that company jointly with the other complainants, all of which the court overruled. Errors are assigned by the rubber companies jointly, and separately by the Metropolitan National Bank and by the United States Rubber Company. The errors assigned on the cross appeal are directed to the rulings upon exceptions to the master's report as well as to the final decree.

WOODS, *Circuit Judge*, after stating the case, delivered the opinion of the court:

Questions of fraud in law and fraud in fact are in their natures separate, though not always distinguishable by clearly defined lines. In this case they have been presented separately in the briefs and in the argument at the bar of the court, but the facts bearing upon them are so commingled and to a large extent inseparable, that to avoid repetition no attempt will be made as we proceed to keep the distinction all the while in view.

There can be no doubt that the question of the validity of the preferences given to the rubber companies and to the bank should be determined by the law of Illinois where the attempt to give them was made. That law, it is also certain, authorizes judgment notes and permits the preferring of creditors by insolvent debtors, whether individual or corporate; and reference has been made to the de-

726 cisions in *Field* v. *Ridgeley*, 116 Ill. 424, *Hegeler* v. *First National Bank of Peru*, 129 Ill. 157 and *Haas* v. *Sternbach*, 156 44, for adjudications of the validity of preferences obtained by me of judgment notes which had been withheld from record "for f years," "for more than a year," and "for five years," while debtor continued in business, obtaining, as it was alleged, new cr which would have been refused if the existence of the judgment n had been known. In *Hegeler* v. *The Bank*, mortgage security had b offered by the debtor, but refused by the creditor "because would injure the credit of the glass company and prevent it fr obtaining credit elsewhere." The court in that case said:

"The argument proceeds throughout upon the proposition t the bank took its notes and held them under circumstances t made its conduct operate as a fraud upon others. There is no p tense that there was any agreement to conceal its claim against glass company; much less that any such agreement was made the purpose to enabling the company to obtain credit from oth No evidence can be found in the record proving, or tending prove, acts or declarations on the part of the appellee calculate induce appellant to give credit to the glass company. There nothing in the bill, and certainly nothing in the evidence, to s that at the time appellee took the notes, and refused to take m gage security, it did not honestly believe that, notwithstanding insolvency of the glass company, it would, if its credit could maintained, successfully recover from its embarrassment, conti business, and pay all its debts."

In *Haas* v. *Sternbach* a mortgage on real estate, kept off the ord at the request of the mortgagor with the view to an e sale of the property, was pronounced not fraudulent as aga creditors of the firm of which the mortgagor was a member; bu important distinction of that case, as well as of the preceding from the present was marked by the court when it said: "Th was no agreement or promise to keep the mortgage secret, but ply that it would not then be recorded; and there is an entire sence of proof that Charles Sternbach or his firm did or said thing, other than withholding the mortgage from record, w could have misled others as to its existence."

"Thus in Illinois it is clearly established law," say cou "that the maintenance of secrecy respecting a prefer without 'fraudulent intent as to other creditors,' does make the preference fraudulent"; and to reinforce proposition they cite *Sanford Fork & Tool Co.* v. *Howe*, 157 S. 312; *Sutton Mfg. Co.* v. *Hutchinson*, 24 U. S. App. 11 C. C. A. 320. Whatever may be thought of the legisla

17924

policy which permits the execution and long holding of unrecorded judgment notes, the decisions cited afford no precedent, direct or inferential, in justification of the scheme in question, the like of which, we believe, if ever conceived, never before was brought into effective operation. As a judicially sanctioned or commercially accepted possibility in business it is unbelievable. It could be attempted only by a corporate debtor, and its approval by the courts would afford a new and fruitful motive for the creation of corporations by the many who would be quick to avail themselves of a promising a method of pursuing hazardous enterprises at the risk of others.

"The maintenance of secrecy," to repeat the words chosen by counsel to express the scope of the decisions referred to, does not signify necessarily more than the fact of secrecy, begun and continued without previous agreement or purpose to maintain it; but secrecy kept for a specific purpose means much more. The master's finding on the point implies, and the evidence demonstrates, a mutual understanding between those concerned that secrecy was necessary, and an express agreement that it should be kept would not have made the understanding more clear or its fulfillment more imperative. During the negotiations the suggestion of a chattel mortgage was advanced but promptly rejected, because without the publicity of recording the security would be invalid against other creditors. The scheme adopted, which, if upheld, though not constituting a recognized form of lien would be a better security than a chattel mortgage, was accepted not only because it made secrecy possible but because it made exposure impossible, if those employed to execute it kept faith; and that every one of them understood or was able to understand, that once the scheme was on foot his chief responsibility would be to maintain a discreet silence, the proof is clear, and there has been no attempt or apparent disposition to deny. Returning to the language of the report: "The matter was kept secret in order to allow"—that is to say, for the purpose of allowing — "the Fargo company an opportunity of getting through embarrassments apparently temporary"; and that of course, and avowedly, they were to do, or to try to do, by continuing the business under a plan which without secrecy was known to be impossible, and by which the risks of the business were shifted wholly upon those who, not suspecting the situation, should give undeserved credit. Secrecy kept for a purpose is not accidental or unintended. It is premeditated; it is in essence the same as if agreed upon; and the color imparted by it to this transaction, when all the circumstances are considered, is not removed by the added

728 words of the finding, "but not with a fraudulent intent as to
other creditors of the company." Read strictly that part of
finding is not broad enough to include subsequent creditors, a
whom the scheme was so plainly wrongful that Charles Fargo, w
is credited with having suggested the making of the change in
directory of his company, after a while became unwilling to pur
it further by seeking renewals of the company's notes in bank.
however, the master intended, as it seems probable he did inte
to find that the parties to the scheme had no conscious purpose
harm either present or future creditors, the finding cannot abro
or restrict the application of that familiar rule, without which
coherent code of law or morals would be impossible, that men shall
deemed to intend the natural and probable consequences of the
acts or conduct. What did these people intend "as to other cr
itors"? Plainly that they should remain or become creditors wi
out security or the possibility of obtaining it and be at the mer
of themselves, who by a secret control of the corporation were to
able at any hour to close its doors and appropriate all its prope
to the payment of their own demands. There is a pertinent pass
in the testimony of Mr. Beale: After explaining that he had p
sonally cautioned Charles Fargo against being too hopeful, be
inclined to branch out, and possibly having too much time to
fishing, and telling him that "he was all right if they handled th
business as it ought to be handled," he added: "They had start
with a big business and ought to be able to carry it along ev
through these hard times, but I was particularly desirous th
through any strong temptation he should not put the Metropolit
bank in a position where it could claim to have been deceived.
do not think that the idea of other creditors, merchandise credito
or their position, entered the mind of either Mr. Johnson or M
Sadler or myself during the entire transaction; we were thinki
of the Metropolitan bank and were anxious to see that that indebt
ness should not increase after we made the arrangement, and th
subject—reference to the Metropolitan bank—formed the subject
some conversation between Mr. Johnson and myself, and I distinct
remember at one of the interviews at the Auditorium Annex say
that Fargo after that must not go to the Metropolit
bank to borrow additional money. We had in mind that h
would not need to increase the credits after getting this $50,0
from the rubber companies." One creditor, at least, was impo
tant enough to be thought of and talked of, and to be the object
solicitous care that "through any strong temptation" Fargo sh
not put it in a position where "it could claim to have been d
ceived." What stronger condemnation could there be of t

eme, or better proof that its essential character was appre-
ded (though unconsciously, according to the finding) by those
e about to put it into operation? There were potent reasons
king of the bank and for desiring that it should not have
for asserting deceit. Mercantile creditors were further away
vidually of much less importance, it is easy to see, than the
olitan National Bank, with which it was a part of the plan
up, though it seems not to increase, the Fargo company's
redit; but all that only emphasizes the wrong done in for-
others, equally entitled to consideration, if they were for-
and if they were purposely left out of consideration, still
was the wrong. The apprehended power of temptation
too strong for one of the Fargos when he obtained credit
Dixon banks by a direct denial that judgment notes had been
d, and for another of them when by an evasive denial he in-
lly produced the same belief. Mr. Beale, concerned only
e legal aspects of the situation and pressed with other busi-
stified as he remembered, but is it possible to believe that
Johnson nor Sadler, during the four days devoted to this one
thought and talked of the bearing of the transaction upon
ditor, the bank, and did not think of its import either to
ho should give credit in the future or to present creditors
demands were a factor in the situation and could not have
nitted from an intelligent estimate of what had been and
e done? Their testimony contains no assertion or admission
forgetfulness.

inventors of the scheme were bound to apprehend its probable
uences, and in fact nothing occurred after January 9, when
put into operation, which was not then reasonably to have
reseen. The large existing indebtedness, present embarrass-
nd the unsettled conditions of business were known; the
en adopted to keep the business going was of course known
ts features; it was known too that new credit was to be sought,
at success was uncertain, to say the very least, in a de-
r beyond the ordinary contingencies of a new business start-
ell, or of an old business in an unembarrassed condition.
he rubber companies apprehended a breakdown is demon-
l, aside from other considerations, by the extraordinary and
rd of means which they employed to guard themselves against
reseen contingencies, knowing that by the same means the con-
ces, however disastrous, would be turned upon others, who
l by the appearance of a well sustained and prosperous busi-
hould give credit to the Fargo company. Two years before a
mbarrassment of the company had been bridged over by an

730 agreement with the rubber companies and the bank; but
ment notes only were then required. The lapse of two
had not improved the situation. The debt to the bank had
largely reduced and that to the rubber companies by a small am
but in the aggregate the liabilities still exceeded $400,000.
assets were represented to be considerably in excess of that am
but no examination or close inquiry was made into the truth
representation, though it was of a character which, under the
cumstances, ought to have challenged belief. To a large ex
not then definitely stated, perhaps, but in the report of A
1896 to the Dun agency put at $366,000, they consisted of
and book accounts; and yet for the purpose of devising mea
raise $25,000—a mere bagatelle as a witness accepting the
from Mr. Beale called it—the representatives of the rubber
panies were summoned on a day's notice to
from New York to Chicago and after arrival de
four days to the achievement. If the notes and accounts were
as represented the aid of the rubber companies was not need
raise $25,000 or twice that sum; or, if needed, why were no
notes and accounts turned over at once as collateral either fo
$50,000 alone, or for that and the original indebtedness?
could have been put at once into the same process of collection
was employed six months later. That course could have been
sued without impairing the standing of the company. But th
dent truth is, and Johnson and Sadler were not much deceived
it, that the statement of assets in that particular, and in other
the plant at Dixon put down at $110,000 when in fact worth n
over incumbrances, was greatly exaggerated, and they can h
be credited with not understanding that the company wa
practically insolvent, and without the indulgence of its cre
bound to close its doors. Even if the bank and rubber com
had agreed to hold their demands in abeyance, the company
have been unable to meet its liabilities of $210,000 to
creditors. To say the least, and without going beyond the
reported by the master, the agents of the rubber companies
that the Fargo company owed commercial debts to the amo
$400,000, that while its assets were asserted to be largely in
of that amount, they were not presently available, and tha
company could go on in business for the next month only by
curing a loan of $25,000, and that to be able to go on certainly
longer time $50,000 would be necessary. It was hoped—let
it was believed—by all concerned that with that sum, under th
agreed upon, the company "would be able to weather the st
It was a storm, they knew, and no matter what they believed,

out better reason than the word of their debtor discredited by facts within their own knowledge, they had no right, in an attempt ride out the storm, to adopt a deceitful plan, which they hoped might ceed but by which, if failure came, loss, supposed to be made ossible to themselves, would certainly befall others. They may be credited with having believed that the assets were then fficient and that in the prosecution of the business under the plan posed they would remain sufficient for the payment in full of r own demands, including the added $50,000, but beyond that, their scheme were lawful, they did not need to care, and evidently not during the negotiations very much concern themselves.

It was not, as alleged in the bill, a part of the plan that increased rchases should be made for the purpose of improving the security the rubber companies. On the contrary the opposite course was ommended by Mr. Johnson, and to some extent was pursued, resulting as stated in a reduction of indebtedness about equally in the gregate to the rubber companies and to other creditors. There s no necessity, at least no known necessity, for a different course the interest of the rubber companies, their security being supposed to be ample, and it being in their power, by means of immeate judgments and executions, to exclude all other creditors il their demands were satisfied. The notes and accounts, though leviable by execution, they supposed could not escape them, because they had a contract with the old board of directors for their nsfer, which the new board appointed to do their bidding would performed. This suggestion, it is true, goes a little beyond the ling of the master that "the only purpose of changing the board" s to protect the rubber companies against the giving of preferen- security or judgment notes to other creditors, but it is evident t other emergencies might have arisen that would have called for active interference of the board, directly or indirectly, for the tection of the rubber companies, and it is idle to say that the ard was not constituted as it was for the purpose of meeting what er emergency might arise in the interest of those companies. "Practically they sat on a safety valve . . . so far as protection to e rubber companies was concerned," answered a witness, accepting in the words of counsel; and the full significance of the figure in the fact that the craft they were sailing if allowed to blow unless the navigators should bungle their work, could not inre owners, nor crew, nor certain passengers, but only those who ould have come aboard in the innocent belief that the boat was one ordinary type, and that they were exposing themselves to no ks from which the captain, crew and other passengers were expt. And that craft, it will not be overlooked, was "a going

732 concern," which by the mere appearance given it of staunchness and completeness of equipment was calculated to allure the unsuspecting to a voyage beset with unwonted dangers.

It has been emphasized in the taking of testimony that the Fargos were to be left to conduct the business in their own way, that the new board, or the new trustees, were not to interfere with them, and that McKeever, the new treasurer elect, was to be treasurer in name only. This it is explained was done so that if the former treasurer, who was still to be treasurer in effect and on the letter heads kept in use was still designated as treasurer, should join in the execution of judgment notes, as in 1893 he had done, his authority could be denied by showing that he was not in fact treasurer. It was a fraud on the law to constitute a board of trustees and a treasurer of a corporation of men who from the beginning were pledged not to give attention to their duties or to participate in the management of the business of the corporation, further than to protect the rights of particular creditors in whose interest alone they were given their places; and when, in addition to enjoined silence and secrecy on the subject, letters under the old form of letter head showing the old officers to be still in office, were sent out as they were to old customers and to new, it was an act of deception for which the rubber companies cannot escape liability, since that it should be done was implied in the plan adopted. It was essential to the secrecy which it was understood should be preserved, and was within the stipulation that the Fargos should be allowed to keep the business going and to conduct it without interference. It is no answer to say that those who dealt with the company did not consider nor care who were the officers. A change in the names on the letter heads could not be made because likely to excite inquiry, and inquiry implied exposure.

When it is important to know the motives of men, their conduct is to be considered rather than their assertions, especially when they testify in support of large pecuniary interests, either their own or of others put at hazard by their conduct. In the negotiations of January Charles Fargo at the beginning was master of the situation. He was able to compel and did compel Johnson to accede to his terms, and it was only by reason of an unlawful delivery of the judgment notes, due on demand, before getting the written agreement which he desired, that he found himself in Johnson's power and Johnson determined upon immediate action,—willing as he had declared himself a day or two before to lose $25,000 or $50,000 rather than that the Fargo company should fail. What Johnson wished and sought at the beginning was security for the $186,437.13 due his houses, and when denied that on terms which

volved an immediate suspension of the Fargo company, he began
negotiate on the basis proposed of a loan to enable the company
tinue in business. Touching his own motives Charles Fargo
d to a belief that suspension was not necessary, and would not
He was either purposely ignorant of the situation or unreason-
opeful. He had a special motive, however, for seeking to es
mmediate surrender, in the fact that he and his brother Frank
ndorsers upon the company's paper to other creditors than
nk and rubber companies to the extent of $15,000, and if the
ss could be kept going a few months that paper could be
up. It was taken up before the collapse in August. The
s, therefore, were acting probably under two motives—one
p the business going, with whatever hope they had of ulti-
success, and the other to keep it going long enough to pay off
bligations of the company on which they were personally

The controlling purpose of Johnson was to get security,
n order to get it he yielded to the request of the Fargos for a
increasing by that sum the demands of his houses. That price
nsented to pay in order to obtain security for the whole in-
dness, believing the security adequate under any contingen-
ikely to come about during the ensuing six months deemed
sary for the working out of the scheme. He was willing,
ps in a degree hopeful, that the Fargos should succeed, and
ther creditors should not suffer, but except for the interest of
ubber companies and the integrity of their security he was
ically indifferent, and any attempt to put him in any other at-
e in the transaction strikes us as unnatural, unbusinesslike and
dible.

August, as in January, Charles Fargo was able to dictate terms
e others concerned in what was then to be done. This time he
othing to lose, but something to gain for himself and his broth-
nd for the Metropolitan National Bank, of which he was a
holder. In January, it appears, he opposed the suggestion of
tting the bank into the arrangement with the rubber compa
and it is perhaps not crediting him with too much acumen to
ose that besides other considerations he saw the advantage of
ng that card for the last play. As an original proposition it is
robable that the bank would have joined in the scheme, but in
nd it was at his mercy, because without yielding the $10,000
ust lose its unsecured $40,000, or bring a suit in court, by
h at best only a small percentage could be saved. The rubber
panies could not oppose him without danger of losing the book
unts and bills receivable which had not yet been assigned, and
out exposing their judgment notes to attack by the bank sup-

734 ported by the Fargos, who, perhaps, were the more to be respect-
ed because "knowledge is power." But for the "pressure" wh
Fargo was able to bring upon them, what businesslike reason w
there for the rubber companies consenting to share their securi
with the bank, if they believed it unimpeachable? Whatever the
thought in January, they knew then that the property within reac
of the executions which they could obtain was insufficient, and wi
the accounts receivable added would hardly realize enough, to satis
their own demands. When the agreement was made with the ban
stipulating that each party should account to the other for a pro
rated share of all sums realized, it is evident that any expectation
full payment had been abandoned. It is recited in the agreem
that the parties had "determined to unite their efforts to colle
their respective claims . . . and share pro rata in the resul
thereof," but nowhere is there a hint of a possible surplus to d
vide. The Fargos had carried away their $10,000, the reas
for their share in what had been done, and there was no reas
apparent at the time, for inserting in the agreement even a form
expression of the residuary rights of the Fargo company and
victimized creditors.

The assignment of the bills and accounts as finally made, treate
as the consummation of the agreement to assign made in Januar
was tainted with the illegality of that contract of which it was
part; and if it could be regarded as an independent act, freed of th
taint of its origin, it was illegal because part of a transaction by whi
the managers of an insolvent corporation going out of business s
cured a preference for themselves. If the Fargo company w
justly indebted to Charles and Frank Fargo for money which the
had borrowed upon a pledge of their bank stock, and the $10,0
obtained of the bank was for the purpose of enabling the corporat
to repay them, it was, under the doctrine of *Sutton Mfg. Co.*
Hutchinson, *supra*, an unlawful preference, and made illegal a
other preference granted wholly or partly in consideration there
This proposition applies also to the preference given to the ban
Besides being managing officers, the Fargos were parti
to the original scheme for securing the rubber companies and
course could not prefer themselves over others whom by the fal
pretenses of that scheme they had induced to give credit to the co
poration.

It is contended in behalf of the bank that it entered into the agre
ment with the rubber companies in ignorance of their arrangeme
with the Fargo company, that there was no wrong in its conduct
that nobody was harmed thereby, and, therefore, that whatev
may be said of the position of those companies, the preference whi

17928

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the bank received is not assailable merely because of its contract to join the rubber companies in efforts to collect their respective demands and to prorate the proceeds. The master has reported that at the time of the completion of the arrangement, "neither the bank nor its officers nor attorneys had any knowledge of the change of the directors of the said C. H. Fargo & Co. or of its by-laws." The president of the bank testified concerning his knowledge on the subject. It does not appear that other officers of the bank had anything to do with the matter, and the finding in respect to them is unobjectionable, but if there is evidence in the record we have not found it that the attorney of the bank, who conducted the negotiation and is shown to have had a much more intimate knowledge of the details of the transaction than the president, did not know every feature of the original scheme. The president of the bank himself testified that when he agreed to loan the $10,000 he knew it was necessary to get the authority of the directors for the execution of the judgment notes for the whole sum of $50,000; and that on his asking Porter when the judgment notes would be made, "he said it was easy to make them—that the directors were all in that office (Beale's) or could be gotten." That certainly ought to have put him upon inquiry into the reasons for so extraordinary an organization of the directory; and in an earlier part of his testimony, after saying knowledge that the Fargo company was officered by parties representing the rubber companies, and being asked when he first learned that persons were acting in behalf of the company other than those connected with its management in the sale of goods, he answered: "It might have been the day following; I think it was from something which was said in Mr. Beale's office by Mr. Porter. My impression is that he said that the directors of the company were men who were employes in the office there, or were part of the firm, of the law firm there." And again on cross-examination he admitted that he did learn "of the extent of the indebtedness to the United States Rubber Company and L. Candee & Company, and also learned that they had some kind of an agreement with the Fargo Company by which they were authorized to secure their indebtedness in advance of any other creditors of the company." All this, it is certain from his own testimony, occurred before the judgment notes to the bank were executed, and before the $10,000 was paid over. If the witness testified to his knowledge or ignorance of the change in the by-laws we have failed to find the passage; but it is not of much importance in view of what he did well understand. Besides, if the bank were acquitted of all guilty knowledge and purpose in the transaction, how can it escape the entangling alliance into which it entered with the rubber companies? The agreement between them

736 is still in force, and if the bank is allowed to retain its prefere
it will be bound to pay over to the rubber companies of wha
realizes in the proportion of $14 to every $5 received to its o
use; and if the preference be set aside and the bank permitted
share *pari passu* with other creditors, except the rubber compan
of the amount so received, great or small, it will be bound to acco
to the rubber companies in the same proportion. The validity
that agreement as between the parties is not in issue and cannot
affected by the decree in this case. If unlawful and invalid
against other creditors because made in fraud of their rights, it
nevertheless binding as between the parties, and could not be
nulled at the suit of either against the consent of the other
account of anything done in this case. Courts of equity do n
interfere to relieve parties from the consequences, though unex
pected, of illegal agreements. Moreover, the bank, if permitte
to share in the fund to be distributed, the rubber companies bei
excluded, would receive more in proportion than if the preferen
had been upheld, and the division were made between it and t
rubber companies. It is clear that the rubber companies we
guilty of fraud in fact, and as against subsequent creditors of t
Fargo company should not be allowed to share in the fund
distribution, and for the reasons stated the bank likewise should
postponed.

The fact that some of the creditors were creditors when t
arrangement between the Fargo company and the rubber compani
was put into operation cannot be allowed to change the result.
is impossible to say that they were not injuriously affected, even
respect to their prior demands, and it is certain that they would n
have given further credit if there had been proper publicity abo
the things done which were purposely kept secret from them. T
innocent creditors, whether prior or subsequent, are all entitled
share proportionately in the fund. The rubber companies and t
bank are not entitled to share as against the subsequent defraud
creditors, and therefore cannot be permitted to share with the pri
creditors, since thereby they would be sharing with those who we
defrauded.

The principal appeal is denied, the cross appeal is sustained, an
the decree below is reversed in so far as it permitted the rubb
companies and the bank to share *pari passu* with other creditor
and the cause is remanded with direction that the decree be so mo
ified as to require the payment in full of all claims of other cred
itors, if the fund be sufficient, and that if anything remains it
paid proportionately to the bank and to the rubber companies.

Mr. Justice BROWN dissenting.

On January 6, 1896, the corporation known as C. H. Fargo & was in desperate financial straits. To avoid an immediate col- se and to procure the money necessary to continue the busness, entered into an arrangement with its two principal creditors, by ich the latter undertook to lend $50,000, and the Fargo Com- ny to execute three judgment notes, not only to secure the $50,- advanced, but $45,000 owing to Candee & Company, and $140,- to the United States Rubber Company, with a further stipula- to assign its accounts and bills receivable, should it become essary for it to suspend business. There was a further stipula- that it should not give any judgment notes to other creditors. secure the performance of this, five of the directors of the Fargo mpany were to retire from the board in favor of five persons cted upon the nomination of the preferred creditors.

The general creditors had no knowledge of this arrangement, al- ugh the Metropolitan National Bank was subsequently informed it.

The master found that this arrangement was "for the purpose of ing preferential security to the rubber companies, and that the tter was kept secret in order to allow the Fargo Company an op- rtunity of getting through embarrassments apparently temporary, not with a fraudulent intent as to the other creditors of the mpany," and that the only purpose and object of changing the ard of directors as aforesaid, and of amending the by-laws, so as prevent the giving of judgment notes, except by vote of the ard, was to protect the rubber companies against the giving of er judgment notes to other creditors.

This arrangement continued until August 6, 1896, during which e the Fargo Company continued its business as before, reduced general indebtedness and its indebtedness to Candee & Company a considerable extent, when it was forced to suspend.

The District Judge was of opinion that although the giving of the dgment notes was not unlawful, the arrangement by which the tter was kept secret, while the corporation divested itself of wer to give like notes to other creditors, and continued to carry its business as before, rendered the whole device a constructive aud upon its creditors. In this we all agree.

To make it actually fraudulent, such as to require the claims of ose preferred creditors to be postponed to the claims of the gen- al creditors, I think it should clearly appear either that the pre- rred claims were not bona fide, of which there is no pretense, or at the arrangement was entered into, not for the purpose of tiding e company over its immediate crisis, enabling it to continue busi- ss, and at the same time to secure the preferred creditors, but for e purpose of ultimately winding it up, and in the meantime of

738 giving it credit and enabling it to purchase additional g
which the preferred creditors would thereby be able to
and subject to their own debts.

I find no testimony to satisfy me that an actual fraud upo
general creditors was intended. The device of changing the
ors was evidently not for the purpose of giving up control o
business, but only to secure the arrangement that no other
ment notes should be given, and as a matter of fact the new
ors did not interfere with the business of the company as con
by the Fargos. Indeed, no meeting of directors was held after
change was made. No new creditors were induced to give cr
the company upon the faith of their continuing the business, a
evidence shows that with few exceptions the same persons
creditors in January and in August.

Of the alleged misrepresentations of the Fargos to the Dix
Bank and to the Pfister and Vogel Company that no judgment
had been given, it may be said that they are not admissible
against the claims of the rubber companies, unless there be evi
of a conspiracy between them to defraud their creditors, of wh
there is no evidence aside from the agreement itself, and that in
event none but the Dixon Bank and the Pfister and Vogel Comp
would have been injured by these representations. Such repre
tations might be used as a basis for giving them priority, but th
would not inure to the benefit of other general creditors. Upon
whole, it does not seem to me that such a case of fraud is made
as authorizes the court to postpone the claims of the preferred cr
itors to those of the general creditors, and thereby practically
confiscate them; and that there is no sound reason for departi
from the general rule laid down by the Supreme Court in *Wils
Cotzhausen*, (129 U. S. 329), and *Streeter* v. *Jefferson Co
Bank*, (147 U. S. 36) wherein the preferred creditors were pe
mitted, after their security had been set aside, to stand upon
equality with the general creditors. See also *Comer* v. *Table*,
Fed. Rep. 467), *Brown* v. *Morristown Store Co.*, (42 S. W. Re
161).

The evidence satisfies me that there was a *bona fide* attempt
assist the Fargo Company in continuing its business, with the h
of ultimately pulling it through, and that if this attempt had
successful, it would have redounded greatly to the interest of
general creditors. It was natural, at least, that in making th
attempt the rubber companies should have endeavored to se
themselves, not only for their immediate outlay of $50,000, but
their prior debts. In palliation of the secrecy, which was held
make this constructively fraudulent, it may be said that public
doubtless would have destroyed the entire scheme of raising mon
to carry on the business.

And afterwards, to-wit: On the third day of October, 1899, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Tuesday, October 3, 1899.

Before:

Hon. Henry B. Brown, Circuit Justice.
Hon. William A. Woods, Circuit Judge.
Hon. James G. Jenkins, Circuit Judge.

ited States Rubber Company, a corporation, L. Candee
Co., a corporation, and Metropolitan National Bank,
Chicago, a corporation,

vs.

American Oak Leather Company, W. J. McBride, Estabrook-Anderson Shoe Company, Lambeau Leather Company, University of Chicago Weekly, Crooks, Root & Co., Thilmany Pulp and Paper Mills, Thomas E. and John E. Wilder, United States Leather Company, Eagle Tanning Works,

and

erican Oak Leather Company, Pfister & Vogel Leather Company, Thomas E. Wilder and John Wilder, co-partners as Wilder & Company, Eagle Tanning Works, United States Leather Company, Lambeau Leather Company, The Good Roads, Carson Pirie Monthly Co., Carver Cotton Gin Co., Calvert Lithographing & Engraving Co., B. E. Cole & Co., Consumers' Box Manufacturing Co., The Continent Shoe Company, Crooks, Root & Co., Cycling Gazette, Easton Boot & Shoe Company, Estabrook-Anderson Shoe Company, Farnsworth, Hoyt & Co., I. P. Farnum, C. C. Farwell & Co., P. A. Field & Co., Fletcher Mf'g. Co., A. F. Gallum & Sons, H. M. George & Co., Goldsmith, Rosenbush & Levie, Goodyear Rubber Co., The R. J. Gunning Co., M. L. Hiller & Sons, A. J. Marcus & Co., J. & H. Mayer, H. Michaels & Co., Milwaukee Tack Co., W. J. McBride, Pliable Shoe Company, Rouse, Maniere, Williams & Co., Shattuck & Binger, A. W. Shaw & Co., T. J. Shay & Co., The Singer Manufacturing Co., W. W. Spaulding, Spinney, Virtue & Co., Stowe, Bills & Hawley, Thilmany Pulp & Paper Mills, Tubular Rivet & Stud Company, University of Chicago Weekly, George H. Van Pelt, Wachusett Mills, Weir Bros. Paper Co., Consolidated Hand Method Lasting Machine Co., Hilliard & Merrill, Tripp Giant Leveller Co., Dry Goods Reporter Co., and E. H. VanIngen & Co

vs.

United States Rubber Company, L. Candee & Co., The Metropolitan National Bank of Chicago, and C. H. Fargo & Co.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

This cause came on for hearing and all the parties hereto ha
stipulated that said appeal and cross-appeal should be heard toge
upon the transcript of the record of the Circuit Court filed in
original appeal and upon the transcript of the supplemental re
of the Circuit Court filed herein in said cross-appeal, the same
heard upon said transcripts of record, and was argued by the co
for the respective parties.

ON CONSIDERATION WHEREOF, it is now here ordered, adjud
and decreed by this court that the decree of the said Circuit Cou
this cause be, and the same is hereby, reversed with costs, in so
as it permitted the rubber companies and the bank to share *pari*
with other creditors in the fund to be distributed; and that this ca
be, and the same is hereby, remanded to the said Circuit Court wit
rection that the decree be so modified as to require the payment in
of all claims of other creditors, if the fund be sufficient, and that
anything remains it be paid proportionately to the bank and to
rubber companies.

UNITED STATES CIRCUIT COURT OF APPEALS

741 For the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States Circuit Cou
Appeals for the Seventh Circuit, do hereby certify that the foreg
printed and typewritten pages, numbered from 1 to 740, inclusi
contain a true copy of the transcripts of record and proceedings in
United States Circuit Court of Appeals for the Seventh Circuit, in
case of United States Rubber Company et al. vs. American O
Leather Company et al., and in the case of American Oak Leat
Company et al. vs. United States Rubber Company et al., Nos
and 599, October term, 1898, as the same remain upon the files a
records of the United States Circuit Court of Appeals, for
Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix
seal of said United States Circuit Court of Appeals for the Seve
Circuit, at the City of Chicago, this eighteenth day of October, A
1899.

(Signed) EDWARD M. HOLLOWAY,
(Seal.) Clerk of the United States Circuit Court of Appe
for the Seventh Circuit.

ITED STATES OF AMERICA, *ss:*

e President of the United States of America to the honorable the
dges of the United States circuit court of appeals for the seventh
rcuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in
ich United States Rubber Company, L. Candee & Co., and The
tropolitan National Bank of Chicago are appellants and The
erican Oak Leather Company, W. J. McBride, Estabrook-Ander-
Shoe Company, *et al.* are appellees, and The American Oak
ther Company *et al.* are appellants and United States Rubber
mpany *et al.* are appellees, which suit was removed into the said
cuit court of appeals by virtue of an appeal and cross-appeal
m the circuit court of the United States for the northern district
Illinois, and we being willing for certain reasons that the said
se and the record and proceedings therein should be certi-
d by the said circuit court of appeals and removed into the
preme Court of the United States, do hereby command you that
u send without delay to the said Supreme Court, as aforesaid,
e record and proceedings in said cause, so that the said Supreme
urt may act thereon as of right and according to law ought to be
ne.

Witness the Honorable Melville W. Fuller, Chief Justice of the
ited States, the fourteenth day of December, in the year of our
rd one thousand eight hundred and ninety-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] Supreme Court of the United States. No. 436, Octo-
r term, 1899. United States Rubber Co. *et al. vs.* American Oak
ather Company *et al.* Writ of certiorari. Filed Feb. 26, 1900.
dward M. Holloway, clerk.

NITED STATES OF AMERICA, } *ss:*
Seventh Circuit, }

In obedience to the command of the foregoing writ of certiorari
d in pursuance of the stipulation of the parties, a full and true
py of which is hereto attached, I do hereby certify and return
at the transcript of the record filed with the application to the
preme Court of the United States for a writ of certiorari in the
se of United States Rubber Company, L. Candee & Co., and
he Metropolitan National Bank of Chicago, appellants, and The
merican Oak Leather Company, W. J. McBride, Estabrook-Ander-
n Shoe Company, *et al.*, appellees, and The American Oak Leather
ompany *et al.*, appellants, and United States Rubber Company *et*
l., appellees, is a full, true, and complete transcript of the record
pon which said cause was heard in the United States circuit court

of appeals for the seventh circuit, together with all proceedings in said court.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, Illinois, this twenty-sixth day of February, A. D. 1900.

EDWARD M. HOLLOWAY,
Clerk U. S. Circuit Court of Appeals, Seventh Circuit.

UNITED STATES OF AMERICA, *Seventh Circuit*, } ss:

In the United States Circuit Court of Appeals for the Seventh Circuit.

UNITED STATES RUBBER COMPANY, L. CANDEE & Company, and Metropolitan National Bank of Chicago, Appellants,
vs.
AMERICAN OAK LEATHER COMPANY, W. J. McBride, Estabrook-Anderson Shoe Company, *et al.*, Appellees. } Appeal.

AMERICAN OAK LEATHER COMPANY ET AL., Appellants,
vs.
UNITED STATES RUBBER COMPANY ET AL., Appellees. } Cross-Appeal.

It is stipulated by and between the parties hereto, by their respective counsel, that the certified copy of the transcript of record in this cause filed by the clerk of this court in the Supreme Court of the United States in an application there made for a writ of certiorari in this cause, there entitled United States Rubber Company, L. Candee & Co., and The Metropolitan National Bank of Chicago, petitioners, *vs.* American Oak Leather Co. *et al.*, respondents, No. 436, October term, 1899, shall be taken as a return to the writ of certiorari granted by said Supreme Court in said cause on the 11th day of December, 1899, and issued under date of December 14th, 1899.

GEORGE A. FOLLANSBEE.
MITCHELL D. FOLLANSBEE.
HENRY S. ROBBINS,
Counsel for Petitioners.

JACOB NEWMAN,
G. W. NORTHRUP, JR.,
FREDERICK A. SMITH,
FRANK A. HELMER,
HORACE KENT TENNEY,
WM. J. MANNING,
SAMUEL P. McCONNELL,
For Respondents.

Endorsed: Filed February 26, 1900. Edward M. Holloway, Clerk.

[Endorsed:] File No. 17,550. Supreme Court U. S., October Term, 1899. Term No., 436. United States Rubber Co. *et al.*, petitioners, *vs.* American Oak Leather Co. *et al.* Writ of certiorari and return. Filed Feb'y 28, 1900.